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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1935**

## No. 287

CAMILLE V. TREIGLE, APPELLANT,

*vs.*

ACME HOMESTEAD ASSOCIATION

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

**FILED JULY 26, 1935.**

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**IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

Division "B"—Docket 5

No. 199,504

CAMILLE V. TREIGLE

versus

ACME HOMESTEAD ASSOCIATION

PETITION—Filed October 2[illegible], 1932

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Camille V. Treigle, of the full age of majority and a resident of the City of New Orleans, with respect represents:

I

That Acme Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for and governing the creation of homestead and building and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

[fol. 2]

II

That petitioner is the owner of Fifty (50) shares of the full paid stock of the Acme Homestead Association, of the face value of One Hundred ($100.00) Dollars each, represented by Certificate No. 1982-A for twenty (20) shares, dated the 24th day of October, 1921, Certificate No. 7158 for twenty-five (25) shares, dated the 9th day of December, 1929, and Certificate No. 5935 for five (5) shares, dated the 30th day of January, 1929, and were issued and delivered to your petitioner on said dates; that the aggregate of the par or face value of said certificates is the sum of Five thousand ($5,000.00) Dollars.

III

That said shares of stock are withdrawable shares, and were acquired by your petitioner subject to all of the rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the applicable provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of his investment in said Homestead Association and of the acquisition of his shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, an implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and fully as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of his investment, and acquisition of the full paid stock of said Association, as heretofore alleged, among the rights accorded to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of [fol. 3] said Association; all of which said rights and obligations are embodied and contained in the provisions of Section 7 of Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in said Section and Act, and which are as follows, to-wit:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by

giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the numbers of shares held by him."

VI

Your petitioner avers that on the 19th day of May, in the year 1932, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by certificates Nos. 1982-A, 7158 and 5935, to-wit, the sum of Five thousand ($5,000.00) Dollars, and your petitioner annexed hereto and makes part hereof, as if set out in full herein, a copy of his said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the date of petitioner's notice of intention to withdraw his investments from said Association, and his said application being then unsatisfied, either in whole or in part, the [fol. 4] rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section

and Act, became fixed and vested; that thenceforth it became the mandatory duty and obligation of said Association, its officers and directors, to set aside one-half of the receipts of said Association, and to apply said funds solely to the discharge and liquidation, in the order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, and the term "receipts" interpreted to mean net receipts, and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlando versus Reliance Homestead Association, reported in Southern Reporter, Vol. 142, page 146; 174 La. Ann. 980.

VIII

That petitioner believes and, so believing, avers that after the date of his notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default sixty (60) days after the application for withdrawal, in whole or in part, on the part of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner himself, the said defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead Association has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, hereinafter more particularly referred to, and purporting to change said procedure.

X

That after your petitioner, by his application to withdraw under Section 7 of Act 280 of 1916, had established

himself in his proper rank and place, according to the date [fol. 5] of his application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and had waited in vain from the time of his application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for payment of the Five thousand ($5,000.00) Dollars, represented by his certificates, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in homestead shares were endeavoring to have the 1932 Legislature pass a new homestead law which would seriously alter the status of petitioner to his disadvantage, and would destroy his legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of his shares in in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping out the ma-datory requirement of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular hereinafter detailed, depriving petitioner of legal rights acquired by him under the law applicable to his investment; that petitioner not only did not acquiesce in said plan to change the law applicable to his investment, but appeared, through counsel, before the committees of the Legislature and urged the injustice and illegality of so depriving him of the rights he had acquired under the existing law, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, — general, said Act 140 of 1932 supercedes Act 280 of 1916, and purports to permit of new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these things retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the

mandatory provisions of former laws, and particularly by Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

[fol. 6] XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and violative of his constitutional rights:

(a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts towards the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of net receipts theretofore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and Act 280 of 1916.

(b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpled- stock, inaugurates an innovation that is experimental and destructive of the principal of mutuality upon which said institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and of the disposition of a valuable asset of said Association i nsuch a manner as can in no way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said associations to infringe upon the one-half of net receipts formerly required to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner and method of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of payment, and abolishes the system of payment in full in the order filed; creates a discriminatory provision for payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the pay-
[fol. 7] ment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association.

(e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5, Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of the State of Louisiana for the year 1921, and are therefore null and

void insofar as they are sought to be made retrospective in their applicability to petitioner or his withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of ninety (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions and law effecting them, much in the same man- [fol. 8] ner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of his rights now declared upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting him, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions of law retroactively upon himself, and does call upon this Honorable Court to take notice of his refusal to acquiesce and to, therefore, protect him in the maintenance of his rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law — than by the process of injunction to restrain and prohibit said Association from applying and following unconstitutional permissive and obligatory provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in the manner and respects hereinbefore complained of and enumerated in detail under Article XII of this petition, insofar as they may disturb the status and effect the statutory and contract rights of petitioner and the investment which petitioner has made in said Associaion; that unless said Association is enjoined

from following the course of conduct either permitted or made obligatory by said Sections of Act 140 of 1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Acme Homestead Association, through its proper officers, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction should not issue herein, restraining and forbidding the Acme Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of his investment in said Association, or in such a manner as to change, alter or impair the rights accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended [fol. 9] by Act 280, 1916.

Petitioner further prays that the Acme Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment herein in favor of petitioner, Camille V. Treigle, and against Acme Homestead Association, said judgment decreeing that Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, insofar only as they may or do affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; judgment further decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner, by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his investment of Five Thousand ($5,000.00) Dollars, represented by certificate No. 1982-A for twenty (20) shares, certificate No. 7158 for twenty-five (25) shares, and certificate No. 7158 for twenty-five (25) shares, and certificate No. 5935 for five (5) shares in said Homestead Association.

Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such further and general relief as petitioner might be entitled to by law, equity and the nature of the case.

By his attorneys, (Signed) Alex W. Swords, (Signed) Hugh M. Wilkinson. (Signed) Alex W. Swords, Trial Attorney.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fol. 10] ORDER

Let a rule "nisi" issue herein, and let the defendant, Acme Homestead Association, through its proper officers, be and it is hereby ordered to show cause on the 31st day of October, 1932, at the hour of 10:30 o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

New Orleans, La., October 21, 1932.

(Signed) M. M. Boatner, Judge.

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EXHIBIT 1 TO PETITION

May 19, 1932.

Acme Homestead Association, 810 Peydras Street, New Orleans, Louisiana.

GENTLEMEN:

I am the owner of the following certificates, representing 50 shares of stock in your Association:

| | |
|---|---|
| Certificate # 1982-A | 20 shares |
| Certificate # 7158 | 25 shares |
| Certificate # 5935 | 5 shares |

I give this notice that I desire to withdraw the funds represented by said certificates from your Association.

I would thank you to acknowledge receipt thereof.

Very truly yours, C. V. Treigle.

CVT.AK.

[fol. 11] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,504

[Title omitted]

ANSWER—Filed January 13, 1933

To the Honorable, the Civil District Court for the Parish of Orleans:

And, now, into this Honorable Court comes Acme Homestead Association, made defendant in the above entitled and numbered cause, and, for answer to the rule nisi, and, also, for answer to the petition of the plaintiff, with respect shows the Court:

I

Respondent denies the averments of Paragraph I, except as hereinafter admitted.

Respondent is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled and doing business in the City of New Orleans.

II

Respondent admits the allegations of Paragraph II.

III

Answering Paragraph III, respondent admits that said shares are withdrawable shares.

Respondent shows that the other averments of Paragraph III are conclusions of law, which respondent is not required to answer. In the alternative, if any facts are involved in said paragraph said facts are denied.

IV

Answering Paragraph IV, respondent shows that the averments of the said paragraph constitute conclusions of law, which respondent is not required to answer; and, if any facts are involved in said paragraph, then respondent denies said facts.

V

Answering Paragraph V, respondent admits that the [fol. 12] shares of petitioner are withdrawable shares; and respondent shows that the other averments of the said paragraph are conclusions of law, which respondent is not required to answer. If any facts are embodied in said paragraph, the said facts are denied.

VI

Respondent admits the averments of Paragraph VI.

VII

Answering Paragraph VII, respondent shows that said paragraph contains mere conclusions of law, which respondent is not required to answer; and if any averments of fact are contained in said paragraph, the said averments are denied.

VIII

Respondent admits the averments of Paragraph VIII, but shows that all such applications for withdrawal by other members in said Association had been applied for and made previous to the application of the withdrawal of the petitioner herein, and were paid by respondent association, when reached on the withdrawal list, in strict accordance with law; and respondent shows that numerous applications for withdrawal antedating petitioner's application herein sued on were never reached on respondent's list, and remain unpaid.

IX

Respondent denies the averments of Paragraph IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law.

X

Answering Paragraph X, respondent denies the averments of fact and conclusions of law stated in said paragraph, except as hereinafter admitted.

Respondent admits the enactments of Act 140 of 1932 by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

XI

Answering Paragraph XI, respondent shows that the said paragraph contains only conclusions of law, which respondent is not required to answer. If any statements of fact are contained in said paragraph, the same are denied.

[fol. 13]

XII

Paragraph XII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIII

Paragraph XIII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIV

Respondent admits that Act 140 of 1932 of the Legislature of Louisiana became effective on July 27, 1932.

Respondent denies the other averments of law and of fact contained in Paragraph XIV of plaintiff's petition.

XV

Paragraph XV contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions, organized and doing business not for profit, but to enable wage-earners to own their homes. Said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control. In Louisiana, the status of these associations, is and has for many years been, reflected in numerous provisions of the legislative statutes and in many decisions of the courts. In bar of the claims of the petitioner herein, respondent pleads the provisions of Act No. 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

In Louisiana, at the close of the year 1930 (last available date), there were one hundred two (102) building and loan

associations, with a membership of 200,930 and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets of $128,964,939.00 and in membership of 225,545. The building and loan associations in Louisiana, at the close of 1930, owned mortgage loans totalling $161,525,736.00, invested in homes and representing, with savings [fol. 14] banks, the greatest factor for the promotion of thrift and good citizenship in the State. The outstanding mortgage loans in building and loan associations in the United States, for the year 1930, represented a total of $7,764,034. The total number of depositors in savings banks in the United States for the year 1930 was 11,895,075, and the total assets of said banks, at the end of that year, amounted to $9,190,969,000.00. In building and loan associations in the United States for that year, there were 12,350,928 members, and the total assets of the said building and loan associations in that year were $8,828,611,925.00.

Your respondent shows that, on or about July 27th, 1932, it had 3,902 member shareholders, with total outstanding mortgage loans of $2,267,000.00, and total assets of $3,128,895.47, and a withdrawal list consisting of 540 applicants, representing $462,217.39, upon which withdrawal list respondent has made no payments since May 15th, 1931, and that respondent has not been able, since that time, to make any payments upon its said withdrawal list.

Since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. In 1929 it became impossible under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere, Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would equitably take care of the applications of members in such associations, and, at the same time, protect and safeguard the interests of the public in said associations.

Under normal business conditions, building and loan associations in this State, and elsewhere, were operated

without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence and with regard to the individual needs of the applicants or the amounts of their applications for withdrawal. Under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

[fol. 15] But these conditions were fundamentally altered by the present depression. As there was great unemployment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. In this State, about twelve months ago, conditions reached the point where, owing to the great public distress and poverty, no one had any money which could be invested in building and loan associations, and all receipts from the investing public or wage-earners ceased absolutely. This same condition made it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. At the same time, the normal collections from borrowers substantially decreased, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their homes. The associations were compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be resold at a loss. When the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

The absence of funds from investors, the necessity of repaying bank loans out of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, made it necessary for the associations to postpone and delay the payment of withdrawal applications, almost indefinitely.

In every association, the shareholders nevertheless continued to present applications for withdrawals; and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could ex-

pect to receive in cash the repayment and return of the monies invested by them in said associations; this being especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawals would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

There were also many shareholders who were particularly in great need of the cash repayment of their small savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in [fol. 16] several cases many years, before receiving the return of their investments.

The new statute (Act No. 140 of 1932), through the medium of a new and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. This new plan does not displace any application for withdrawal, but, for the general good, and in the interest of the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

The said statute was recommended to the Legislature by the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. The State Banking Department for thirty years, as required by law, has been recommending basic changes in the organization, operation and management of building and loan associations. Many of these recommenations have been adopted by the Legislature, and enacted into law. Said recommendations and new legislative provisions have been complied with by the building and loan associations of this State. Indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of building and loan associations, or the right of the Legislature, in its discretion, to regulate, or to suppress altogether, the business of building and loan associations.

The system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholder may rush in and

get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises considered, respondent prays that the demand of the plaintiff may be denied, and that plaintiff's suit be dismissed, with costs.

And for all general and equitable relief.

(Signed) Legier, McEnerny & Waguespack, Attorneys for Defendant. (Signed) Harry McEnerny, Jr., Trial Attorney. (Signed) J. Zach Spearing, Delvaille H. Theard, Scott E. Beer, Weiss, Yarrut & Stich, Carroll, McCall & Plough, A. D. Danziger [fol. 17] and P. H. Stern, J. G. Dempsey, D. J. Murphy, H. Mithoff.

*Duly sworn to by Joseph S. Flandry. Jurat omitted in printing.*

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[fols. 18-29] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,504

[Title omitted]

DEFENDANT'S EXCEPTIONS—Filed May 16th, 1933

Into court comes the defendant, Acme Homestead Association, which excepts to the petition and demand of the plaintiff herein, on the ground that the same discloses no right of action and no cause of action.

Wherefore, exceptor prays that the said exceptions may be maintained, and that the present suit may be dismissed at the cost of the plaintiff.

And exceptor prays for all general and equitable relief, etc.

(Signed) Legier, McEnerny & Waguespack, Delvaille H. Theard, Attys.

Certificate

Delvaille H. Theard, of counsel herein, does hereby certify that, in his opinion, the foregoing exceptions are well

founded in law; that said exceptions have been filed in good faith, and not for delay.

New Orleans, May 16, 1933.

(Signed) Delvaille H. Theard.

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[fols. 30 & 31] In Civil District Court of Orleans Parish

Charter and By-Laws of the Acme Homestead Association, New Orleans, Louisiana, Filed by Counsel for Plaintiff—Filed June 1st, 1934

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Section 6. Withdrawals.—Full Paid Stock may be withdrawn at any time, by giving notice, in writing, to the Association through its Secretary, which notice shall be registered by him in order received, and in the same manner as notices for withdrawals of Installment shares, and shall be paid for in the order received, out of any unappropriated money in the treasury; provided that not more than one-half of the monthly receipts of the Association shall be used in the payment of withdrawals. Dividends shall cease from the date of the Notice of withdrawal. The Shareholder shall receive the face value of the stock, together with all dividends declared thereon, which shall not have been previously withdrawn, less a pro-rata share of losses, if any, in excess of the amount in the Contingent fund of the Association.

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[fol. 32] In Civil District Court of Orleans Parish, Division "D"

No. 199,497

Treigle Sash Factory, Inc.,

vs.

Conservative Homestead Assn.

Reasons for Judgment—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead

Assoociation, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until 1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no

interest or profits from the time of such notice; but at no [fol. 33] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable to the demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchasing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw are filed. Whenever the proposition of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desir-

ing to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stockholders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 34] doubt led most of the subscribers to make the investments in the respective homesteads, which during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George

S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act 140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a fundamental part of the form of government under which both the federal and state government function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 35] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very

largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the

government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I [fol. 36] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, but because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two-fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in

historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corporations. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the State as to the manner and form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein [fol. 37] homesteads can no longer borrow from banks with with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic

conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in thier brief an expression from Chief Justice O'Neill, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enactment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in mind, it will be judicially assumed that it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given case, the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applicafons up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also pay-

ing the withdrawing stockholders in the order of their applications for withdrawal, it provides that they shall be paid only twenty-five percentum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five percentum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 38] percentum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him under the Act of 1916 are paid out twenty-five percentum while his seventy-five percentum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the order of precedence as stipulated in the Act of 1916, and, through the exercise of this discretion, the board of Directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is fur-

ther subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present statute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future shareholders, one can certainly not, by a legisla- [fol. 39] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the

benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing members, except after provision was made for the settling aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 40] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him

and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

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[fols. 41-49] In Civil District Court for the Parish of Orleans, State of Louisiana

Division "D". Docket 5

No. 199,504

Camille V. Treigle

versus

Acme Homestead Association

Judgment

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of the plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Camille V. Treigle, and against defendant, Acme Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further ordered, adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said defendant is restrained and enjoined from in any manner carrying into effect the provisions of.

Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $500.00.

Judgment rendered and read in open Court, May 16, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Signed) Walter L. Gleason, Judge.

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[fol. 50] In Supreme Court of Louisiana

No. 33,065

Camille V. Treigle

v.

Acme Homestead Association

Appeal from the Civil District Court for the Parish of Orleans, Walter L. Gleason, Judge

Opinion and Judgment—March 4, 1935

O'Niell, C. J.:

The plaintiff being a withdrawing shareholder in the Acme Homestead Association, obtained a judgment against the association, declaring that Sections 53, 54, 55 and 56 of Act 140 of 1932 are unconstitutional, and enjoining the association from obeying these provisions of the statute. The homestead association has appealed from the decision. There are five other such suits, in each of which the plaintiff obtained a similar judgment and the defendant, homestead association, has appealed—namely, Samuel Sakolosky v. Equitable Homestead Association, No. 33,056; Camille Treigle v. Thrift Homestead Association, No. 33,071; Treigle Sash Factory, Inc., v. Conservative Homestead Association, No. 33,072; Treigle Sash Factory, Inc., v. Union Homestead Association, No. 33,074; and Joseph Mitchell v. Conservative Association, No. 33,075.

The only question is whether Sections 53, 54, 55 and 56 of the Act of 1932 are unconstitutional, as the judge of the Civil District Court has decided. The plaintiff pleads that the provisions of these sections, which materially change the method of paying claims of withdrawing share-[fol. 51] holders in building and loan associations, impair the obligations of contracts, and divest the withdrawing shareholders of their contract rights, and are therefore violative of Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of Louisiana; and that these provisions of the statute deprive the withdrawing members of building and loan associations of their property without due process of law, and deny to them the equal protection of the laws, and are therefore violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and Section 2 of Article I of the Constitution of Louisiana.

By Section 7 of Act 120 of 1902, as amended by Act 280 of 1916, which was in effect when the plaintiff became a shareholder in the Acme Building and Loan Association and when he applied for withdrawal, it was provided that a member of a building and loan association might withdraw the amount of his shares at any time by giving written notice of his intention so to do, and that he would be entitled then to receive the amount paid in by him, and such proportion of the profits as the charter and by-laws might prescribe, less all fines, charges, expenses and losses accrued or contingent at the time of notice of withdrawal, as the board of directors might determine. It was provided also that every building and loan association should keep a register of the notices of withdrawal, and should pay the amounts due to the withdrawing shareholders in the order in which their notices were filed. It was provided further that, whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors was not sufficient to pay all of such demands within sixty days from the date of notice, one-half of the receipts of the association thereafter should be applied to the liquidation of the claims of the withdrawing members until all deferred claims were paid.

[fol. 52] In State ex rel. Orlando v. Reliance Homestead Association, 174 La. 980, 142 So. 146, and in Harding Realty

Co. v. Blanchard, 179 La. 430, 154 So. 47, it was held that the term "receipts", in the provision of the statute requiring building and loan associations to apply one-half of their "receipts" to the payment of withdrawals if they were sixty days in arrears, did not mean "gross receipts", but meant "net receipts", or funds which might "reasonably be made available for the payment of such claims after paying the primary obligations and necessary expenses of the association".

In accordance with the provisions of Section 7 of the statute then in effect, and the pertinent provisions of the charter and by-laws of the association, the plaintiff gave notice of his intention to withdraw the amount of his shares; and more than sixty days had gone by after the notice was given, when the Act of 1932 came into effect. If the provisions of the Act of 1902, as amended by the Act of 1916, had not been superseded as they were by the Act of 1932, the plaintiff would have been entitled to receive the amount of his shares, if and when all previous applications on the withdrawal list would have been paid. And the plaintiff had a right of action to compel the association to apply one-half of its net receipts to the liquidation of the claims of the withdrawing members until all deferred claims were paid.

The Act of 1932 is a complete codification of the laws governing building and loan associations; and, by the terms of the repealing clause, the act supersedes the Act of 1902 and all amendments made previous to the adoption of the Act of 1932. The purport and effect of Sections 53, 54, 55 and 56 of the Act of 1932, under the rubric "Withdrawals", was to abolish the provisions of Section 7 of the Act of 1902, as amended by the Act of 1916, so far as those provisions required building and loan associations to pay the claims of withdrawing shareholders in full in the order of the filing of their notices, and to allocate one-half of the net receipts to the payment of such claims if they were [fol. 53] not all paid within sixty days from the date of the notice of withdrawal. Section 53 of the new act allows the board of directors of a building and loan association, before appropriating receipts to the liquidation of the claims of withdrawing members, to use such receipts and funds as are needed for operating expenses and for the

maintenance and improvement of repossessed property, and for the payment or renewal of obligations of the association, and the creation of cash reserves needed for declaring dividends. Section 54 of the new statute provides, as a substitute for the system of paying withdrawals in full in the order of seniority, a new method of distribution, by which each applicant for withdrawal is entitled to one-fourth of the amount of his shares when his name comes to the top of the withdrawal list, and his name is then sent to the foot of the list, to await his turn to receive another fourth of the amount of his shares, when his name comes again to the top of the list. All of that, however, is said to depend upon there being funds available to meet the demands of withdrawing members. If a fourth of a claim at the top of the withdrawal list is less than $500 the applicant is entitled to the minimum of $500, and if the whole claim does not exceed $500 it is paid in full, if there are funds available to pay the claim. Every new application takes its place at the foot of the list. The association is allowed, in its discretion, to pay in full and on demand the claim of any withdrawing member whose claim is less than $100, and may pay a sum not exceeding $100 per month to a withdrawing member in emergent circumstances. This section of the statute provides also that, whenever the amount of the withdrawals exceeds 60 per cent of the accumulated capital of the association, the State Bank Commissioner, who is ex officio Supervisor of Homestead and Building and Loan Associations, may, if he believes that the condition of the association justifies such action, direct that the payment of withdrawals in the order stated shall be discontinued, and that they shall be paid thereafter on a pro rata basis—[fol. 54] the distribution to be made to all members whose names were on the withdrawal list on a date not less than ten days previous to the issuing of the distribution checks. This section of the statute provides, finally, that installment shares which have a fixed maturity, and on account of which no installment has been delinquent longer than a year during a period exceeding seven years, shall, at their maturity, be preferred over all shares on the withdrawal list, and that no other shares on the withdrawal list shall be cashed until such installment shares have been paid. Section 55 of the statute provides that a member who

has given notice of his intention to withdraw shall remain a shareholder, and be classified as a withdrawing member; that, except as stated in Section 53, no liabilities or losses of the association of a date subsequent to the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and that, from the date of his application to withdraw, and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as thereinafter set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to an allowance or dividend in the distribution of the accumulated or current profits or earnings. The expression "as long as his application for withdrawal has not been withdrawn" means that a withdrawing shareholder may at any time withdraw his application for withdrawal, and thenceforth have the advantages of a non-withdrawing member of the association. This section of the statute purports to forbid a withdrawing shareholder to sue the association for any cause except to enforce the provisions of the statute or to prevent a violation thereof; which means nothing more than that the provisions of the statute shall control both the association and the withdrawing shareholder; and, in furtherance of the right of action of a withdrawing shareholder to enforce the provisions of the statute or to prevent a violation thereof, it is provided that, for such purpose only, [fol. 55] a withdrawing shareholder shall have the right to inspect the books and records of the association, under such reasonable rules as the association may prescribe. This section gives the board of directors the right, in its discretion, to pay an allowance on applications for withdrawal, under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list as the board may prescribe, provided that the rate of such allowance to withdrawing members shall not exceed 60 per cent of the rate of dividend currently paid to continuing mmbers, and provided that such allowance to withdrawing members may be discontinued at any time without affecting the right of the board to continue to pay dividends on the shares of the continuing members. Section 56 of the statute declares that the matter of determining the proportion of receipts which shall be attributed to the payment of withdrawals shall be entirely under the

control of the board of directors; that the existence of a withdrawal list shall not prevent the making of new loans to continuing members or to new members, to an extent not exceding one-fourth of the gross receipts, or prevent the use of the funds or receipts of the association for the payment of its debts, no matter when or under what circumstances they were insured, or for expenses incident to the carrying on of the business. And this section of the statute declares, finally, that dividends, at such rate as the board may deem proper, may be paid to continuing members of the association, out of its earnings or undivided profits, notwithstanding a list of unpaid withdrawals.

The Act of 1932, therefore, did change materially the method formerly established for the payment of the claims of withdrawing members of building and loan associations, and did, in a general way, perhaps prolong the time in which the claims then on the withdrawal lists of such associations would be paid in full. But, dealing with the withdrawing members of all building and loan associations throughout the state, as a class, it can not be said with [fol. 56] certainty that the change which was wrought by the act of 1932 destroyed—or even impaired—the assurance that the claims of these members would be paid eventually in full. Whether the statute impaired the prospect of any individual member, in that respect, depended largely upon his relative position on the withdrawal list, and more largely upon the financial condition of the association itself, and upon its ability to continue in business long enough to pay the claim. The purpose of the act of 1932 was not to favor any member or class of members to the prejudice of another member or class of members of a building and loan association, but to benefit indiscriminately all members of such associations, and the general public, by saving these institutions from dissolution, which they were menaced with, by the financial depression. During normal times, when the act of 1916 was adopted, and until the financial panic set in, building and loan associations received substantial sums on their stock subscriptions and made prompt collections of interest and principal on their loans, and were able to pay withdrawals promptly, if not on demand. But when the depression came on, with its resultant condition of unemployment, and the consequent need of money for household expenses, there were

no funds available for investment in the shares of building and loan associations, and very little for the payment of debts due to them, or for the payment of interest on the loans they had made. The demands for withdrawals became overwhelming, and whenever a large claim came to the top of the list it blocked indefinitely the small claims of those who were more in need of their money. The result was, by the time the act of 1932 was drafted and submitted to the Legislature by the State Bank Commissioner, that the business of building and loan associations was stagnant—not only in Louisiana but throughout the whole United States. For example, the Acme Homestead Association, defendant in this suit, had, when the act of 1932 was adopted, 3,902 members, $2,267,000 of outstanding mortgage loans, $3,128,895 of assets, and a withdrawal list of 540 shareholders, whose claims amounted to $462,217—on which no payment had been made for two years and [fol. 57] two months when the new statute came into effect, and on which no payment was made afterwards, up to the time the defendant answered this suit. The Equitable Homestead Association, defendant in another of these suits, had 2,025 members, $1,386,000 of outstanding mortgage loans, $1,803,298 of assets, and a withdrawal list of 276 shareholders whose claims amounted to $138,540—on which no payment had been made for a year and nine months when the act of 1932 came into effect, and on which no payment was made afterwards, up to the time the association answered Samuel Sokolosky's suit. The Thrift Homestead Association, defendant in another of these suits, had 1,962 members, $1,135,900 of outstanding mortgage loans, $1,597,698 of assets, and a withdrawal list of 249 shareholders, whose claims amounted to $145,025—on which no payment had been made for more than a year and nine months when the act of 1932 came into effect, and on which no payment was made afterwards, up to the time the association answered Camille V. Treigle's suit—except emergency loans, amounting to only $900. The Conservative Homestead Association, defendant in two of these suits, had 6,742 members, $4,720,200 of outstanding mortgage loans, $6,513,684 of assets, and a withdrawal list of 1,078 shareholders, whose claims amounted to $711,632—on which no payment had been made for two years and three months when the act of 1932 came into effect, and

on which no payment was made afterwards, up to the time the association answered these suits. The Union Homestead Association, defendant in another of these suits, seems to have been in better condition, having 6,966 members, $5,135,000 of outstanding mortgage loans, $5,320,146 of assets, and a withdrawal list of 489 shareholders, whose claims amounted to $351,033—on which payments had been made up to a date five months before the act of 1932 came into effect.

These conditions which we have described, which are disclosed by the record, and which are mainly matters of common knowledge, show that the plaintiff's contention, that the act of 1932 interfered with or delayed his receiving in cash the amount of his shares of stock is merely an opinion, [fol. 58] and is problematical, because it is founded upon the assurance, or postulate, that the business of the building and loan association would have withstood the prevailing financial difficulties until half of the net receipts of the business would have been sufficient to pay off all of the withdrawing shareholders who were ahead of the plaintiff on the withdrawal list.

There is no doubt, however, that the Act of 1932 did prevent some of the many withdrawing shareholders in building and loan associations throughout the state from collecting the amount of their shares in full at the time when payment would have been made if this statute had not been adopted. We shall rest this decision, therefore, upon the proposition that the Act of 1932 did deprive the plaintiff of an advantage, and of a valuable right, which he enjoyed by virtue of having his name on the withdrawal list more than sixty days before the statute was adopted. The question, therefore, is whether the Legislature could deprive the plaintiff of the advantage and right which he enjoyed, without violating the constitutional limitation forbidding the passing of a law impairing the obligation of contracts, or divesting vested rights.

The objects and purposes for which building and loan associations are created, and the business carried on by them, are matters of "public utility and advantage". It was so declared by the Legislature itself by Act 161 of 1888, and was so recognized by this court in Mayre v. Pierson, 171 La. 1077, 135 So. 163, and in First National Bank v. Louisiana Tax Commission, 175 La. 119, 143 So. 23, and

in State ex rel. Cotonio v. Italo-American Homestead Association, 177 La. 766, 149 So. 449. That means that all business transactions which individuals have with building and loan associations are, like transactions with savings banks, insurance companies, and the like, subject to regulation and control by the Legislature, in the exercise of the [fol. 59] police power. Individuals who acquire stock in building and loan associations know in advance, or are charged with knowledge, that their contract rights which result from their membership in such associations are conferred and controlled by statute and are therefore subject to impairment at any time by an act of the Legislature. The only limitation upon the authority of the Legislature, in that respect, is that the act must be intended for the public welfare, must have reasonable relation to the purpose to be accomplished, and be not arbitrary or discriminating. The courts have no authority to look beyond these requirements, or into the question of expediency of the acts of the Legislature. State ex rel. Civello v. City of New Orleans, 154 La. 271, 97 So. 440; Harding Realty Co. v. Blanchard, 179 La. 430, 154 So. 47; McCray v. United States, 195 U. S. 27, 49 L. Ed. 78; McLean v. State of Arkansas, 211 U. S. 547, 53 L. Ed. 319; Chicago, Burlington & Quincy Railroad Co. v. McGuire, 219 U. S. 549, 55 L. Ed. 328; Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. Ed. 184; Price v. Illinois, 238 U. S. 452, 59 L. Ed. 1405; Rast v. Van Deman & Lewis Co., 240 U. S. 357, 60 L. Ed. 687; Merrick v. N. W. Halsey & Co., 242 U. S. 568, 61 L. Ed. 498; Adams v. Tanner, 244 U. S. 590, 61 L. Ed. 1336; Green v. Frazier, 253 U. S. 239, 64 L. Ed. 881; Lower Vein Coal Co. v. Industrial Board of Indiana, 255 U. S. 144, 65 L. Ed. 555; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 65 L. Ed. 577; Block v. Hirsh, 256 U. S. 135, 65 L. Ed. 865; Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735; Twin City Pipe Line Co. v. Harding Glass Co., 283 U. S. 356; State of Arizona v. State of California, 283 U. S. 423, 75 L. Ed. 1154; Sproles v. Binford, Sheriff, 286 U. S. 374, 76 L. Ed. 1167; Wabash Valley Electric Co. v. Young, 287 U. S. 488, 77 L. Ed. 447; Williams v. Mayor and City Council of Baltimore, 289 U. S. 36, 77 L. Ed. 1015; Gant v. Oklahoma City, 289 U. S. 98, 77 L. Ed. 1058.

From the fact—of which there is no dispute—that the business of building and loan associations is of a public

character, or matter "of public utility and advantage" and [fol. 60] therefore subject to regulation and control by the Legislature in the exercise of the police power, it must follow that the authority of the Legislature in that respect cannot be frustrated of forestalled by the making of private contracts with building and loan associations. The reason is that the constitutional prohibition against legislation "impairing the obligation of contracts" does not protect contracts which "deal with a subject-matter which lies within the control of the Congress" or the Legislature. It was so said by Chief Justice Hughes in the Gold Clause cases, Norman v. Baltimore & Ohio Railroad Co. and United States v. Bankers' Trust Co., 293 U. S. —, 55 Sup. Ct. 407, 79 L. Ed. 417; from which decision we excerpt these appropriate paragraphs—viz:

"We have not attempted to summarize all of the provisions of these measures. We are not concerned with their wisdom. The question before the Court is one of power, not of policy."

* * * * * * *

"The conclusion was [in Knox v. Lee, 12 Wall. 457, 20 L. Ed. 287] that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the government, and that no obligation of a contract 'can extend to the defeat' of that authority."

* * * * * * *

"Contracts, however express, cannot fetter the constitutional authority of the Congress [or the Legislature]. Contracts may create rights of property, but, when contracts deal with a subject-matter which lies within the control of the Congress [or the Legislature], they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See Hudson County Water Co. v. McCarter, 209 U. S. 349, 357, 28 S. Ct. 529, 52 L. Ed. 828, 14 Ann. Cas. 560."

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"Applying that principle, the Court held that a contract, valid when made (in 1871) for the giving of a free pass by

[fol. 61] an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after the Congress had passed the Act of June 29, 1906, 34 Stat. 584. Louisville & Nashville Railroad Company v. Mottley, 219 U. S. 467, 31 S. Ct. 265, 270, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671. Quoting the statement of the general principle in the legal tender cases, the Court decided that the agreement must necessarily be regarded as having been made subject to the possibility that, at some future time, the Congress 'might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable, or to impair its value'. The Court considered it inconcievable that the exercise of such power 'may be hampered or restricted to any extent by contracts previously made between individuals or corporations'. 'The framers of the Constitution never intended any such state of things to exist.' Id. page 482 of 219 U. S., 31 S. Ct. 265, 270."

* * * * * * *

"The principle is not limited to the incidental effect of the exercise by the Congress [or the Legislature] of its constitutional authority. There is no constitutional ground for denying to the Congress [or the Legislature] the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt."

* * * * * * *

"Whether they [the contracts in question] may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress [or the Legislature] is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision of the Congress [or the Legislature] as to the degree of the necessity for the adoption of that means is final."

* * * * * * *

[fol. 62] "We are not concerned with consequences, in the sense that consequences, however serious, may excuse an

invasion of constitutional right. We are concerned with the constitutional power of the Congress [or the Legislature] * * * and its attempted frustration."

Although the facts of the present case are not like the facts in the Gold Clause cases, the principle which controlled the decision in the Gold Clause cases is appropriate here—where the contract with the building and loan association dealt with a subject-matter which was within the control of the Legislature. The same principle was applied in the Legal Tender cases, Knox v. Lee, and Parker v. Davis, 12 Wall. 457, 20 L. Ed. 287; which were cited by the Chief Justice in the Gold Clause cases. And the same principle was held to destroy or impair the contracts which were set up in the following cases: Manigault v. Springs, 199 U. S. 473, 26 S. Ct. 127, 50 L. Ed. 274; Polk v. Mutual Reserve Fund Life Association, 207 U. S. 310, 52 L. Ed. 222; Hudson County Water Co. v. McCarter, Attorney General, 209 U. S. 349, 28 S. Ct. 529, 52 L. Ed. 828, 14 Ann. Cas. 560, cited by the Chief Justice in the Gold Clause cases; Louisville & Nashville v. Mottley and wife, 219 U. S. 467, 31 S. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, also cited by the Chief Justice in the Gold Clause cases; Sproles v. Binford, Sheriff, 286 U. S. 374, 52 S. Ct. 581, 76 L. Ed. 1167, also cited by the Chief Justice in the Gold Clause cases; Atlantic Coast Line Railroad Co. v. City of Goldsboro, 232 U. S. 558, 34 S. Ct. 364, 58 L. Ed. 726; Union Dry Goods Co. v. Georgia Public Service Corporation, 248 U. S. 372, 39 S. Ct. 117, 63 L. Ed. 309, 9 A. L. R. 1420, also cited by the Chief Justice in the Gold Clause cases; Dillingham v. McLaughlin, 264 U. S. 370, 68 L. Ed. 742; and Stephenson v. Binford, 287 U. S. 151, 53 S. Ct. 181, 77 L. Ed. 288, 87 A. L. R. 721, also cited by the Chief Justice in the Gold Clause cases.

In Union Dry Goods Co. v. Georgia Public Service Corporation, supra, the court restated the doctrine, from the [fol. 63] earlier cases, thus:

"That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court. Thus, in Manigault v. Springs, 199 U. S. 473, 480, 50 L. Ed. 274, 278, 26 Sup. Ct. Rep. 127, it was declared that:

" 'It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from [properly] exercising such powers * * * for the general good of the public though contracts previously entered into between individuals may thereby be affected.'

"This on authority of many cases which are cited.

"In Hudson County Water Co. v. McCarter, 209 U. S. 349, 357, 52 L. Ed. 828, 832, 28 Sup. Ct. Rep. 529, 14 Ann. Cas. 560, it is said that:

" 'One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter.'

"In Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 482, 55 L. Ed. 297, 303, 34 L. R. A. (N. S.) 671, 31 Sup. Ct. Rep. 265, this is quoted with approval from the Legal Tender Cases, 12 Wall. 457, 550, 551, 20 L. Ed. 287, 311, 312, viz:

" 'Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.'

"In Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 567, 55 L. Ed. 338, 31 Sup. Ct. Rep. 259, it is said:

" 'There is no absolute freedom to do as one wills or [fol. 64] to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community.'

"In Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558, 58 L. Ed. 721, 726, 34 Sup. Ct. Rep. 364, the court said:

" 'It is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power

of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise.'

"And in Rail & River Coal Co. v. Ohio Industrial Commission, 236 U. S. 338, 349, 59 L. Ed. 607, 615, 35 Sup. Ct. Rep. 359, the state of the law upon the subject is thus aptly described:

" 'This court has so often affirmed the right of the state in the exercise of its police power to place reasonable restraints, like that here involved, upon the freedom of contract, that we need only refer to some of the cases in passing.'

"These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state."

In Dillingham v. McLaughlin, supra, the court cited many of the decisions which we have cited, in support of this conclusion:

[fol. 65] "The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future."

It might be argued—and we presume it was argued in the many cases which we have cited—that, if the contract clause in the Constitution does not protect contracts dealing with a subject-matter which the Congress or the Legislature has the authority to control or regulate, the contract clause is an unnecessary provision in the Constitution, because legislation on a subject-matter which the Congress or the Legislature has not the authority to control or regulate would be invalid, regardless of the contract clause. That argument, however, is considered as having been answered and forever settled by the many decisions, which we have cited, of the highest court in the land. The principle does not seem to be affected by the fact that, while the Congress cannot legislate on any subject-matter

not permitted by the Constitution, the Legislature may legislate on any subject-matter not forbidden by the Constitution. In Louisiana every individual who has dealt with a building and loan association during the last forty-seven years was notified by Act 161 of 1888 that he was dealing with a corporation of "public utility and advantage."

We do not find anything unreasonable, arbitrary, or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections. That their provisions are appropriate to the object, of saving the building and loan associations from liquidation and of reviving their business, and of thereby benefiting all of the shareholders as a class and the public generally, is obvious, and is vouchsafed by the fact that the statute was drafted and recommended by the State Bank Commissioner, who, according to Section 18 of Article VI of the Constitution and Section 64 of the Act of 1932, is ex officio Supervisor of Homestead [fol. 66] and Building and Loan Associations.

Our attention is called to similar statutes which have been enacted in many other states during the last few years of the financial depression; and we are not aware of any instance where provisions such as are questioned in this case have been declared unconstitutional by a court of last resort. In Fornataro and Romano v. Atlantic Coast Building & Loan Association, 10 N. J. Misc. 1248, 163 Atl. 240, the plaintiffs, being withdrawing shareholders in the association, contended that a statute of 1932 (chap. 102, P. L. 1932, p. 175), similar to the Louisiana statute of 1932, could not deprive them of their rights acquired under a previous statute (chap. 65, P. L. 1925, #52, p. 212, Comp. St. Supp. #27-R52) without violating the obligations of the contract between them and the association. The Supreme Court of New Jersey ruled against the plaintiffs' contention, quoting literally, and basing its decision upon, the paragraph which was quoted in Union Dry Goods Co. v. Georgia Public Service Corporation, from Manigault v. Spring, supra.

The plaintiff cites Sundheim's work entitled Law of Building and Loan Associations, Third Edition, Sec. 159, PP. 161, 162,—viz:

"The courts in the United States generally hold that the right to withdraw, after full compliance with all the conditions of the statute or by-laws, is a vested contractual

right, and any change which impairs the substance of the right after it has become vested by membership is invalid as to existing members, but slight changes affecting the remedy only may be made. Thus, where the right to withdraw under the original by-laws was unconditional, an amendment providing that only one-half of the receipts should be applicable to withdrawals is not binding on existing members. * * * After the withdrawal has been perfected, by the maturity of the notice, a statute or by-[fol. 67] law which changes the order of payment to his disadvantage violates the member's vested right and is therefore unconstitutional and void as to him."

The cases which the author cites in support of these statements are Holyoke Building & Loan Association v. Lewis, 1 Colo. App. 127, 27 Pac. 872; Sinteff v. People's Building, Loan & Savings Association, 37 App. Div. 340, 57 N. Y. Supp. 611, affirmed in 166 N. Y. 630, 60 N. E. 1120; Fidelity Building & Loan Association v. Thompson (Tex. Com. App.), 51 S. W. (2d) 578, denying a rehearing (Tex. Com. App.), 45 S. W. (2d) 167, which reversed (Tex. Civ. App.), 25 S. W. (2d) 247; Kelly v. Republic Building & Loan Association (Tex. Civ. App.), 34 S. W. (2d) 924; and Savage v. People's Building & Loan Association, 45 W. Va. 275, 31 S. E. 991. The ruling in the Holyoke Case is not appropriate here because in that case the right of the withdrawing shareholder, Lewis, was not impaired by statute but was attempted to be taken away from him by a change in the pertinent articles of the by-laws, by the directors of the association—viz: "The association declined to return the money, insisting that since the payment by Lewis the directors of the association had repealed the article of the by-laws referred to, and therefore defendant in error [Lewis] was not entitled to withdraw the money from the association". Sinteff's Case, also, was merely an attempt on the part of the board of directors of the association to breach the contract. The only question in the case was whether the condition printed on the back of Sintell's stock certificate, "the articles of association, by-laws, terms and conditions, together with the application, are to be construed together as the contract between the shareholder and the association", included and made applicable all subsequent amendments of the articles and by-laws, and, specifically an amendment which was made after

the certificate was issued and which changed the method of paying withdrawals, to the prejudice of the shareholder. The court decided that the conditions printed on the stock [fol. 68] certificate did not refer to subsequent amendments of the by-laws, detrimental to the rights of the shareholder; and, in so deciding, the court reconciled its decision with the ruling in Engelhardt v. B. & L. Association, 148 N. Y. 281, 42 N. E. 710. The case of Fidelity B. & L. Association v. Thompson was a contest between the borrowing and the nonborrowing members of an insolvent association; and the statute which was under consideration was held to be invalid in attempting to discriminate against the nonborrowing members by imposing upon them all of the losses of the association. The decision is not at all relevant to the issue in the present case. The ruling which was made in Kelly's Case does seem to be in point; but, with great respect for the judgment of the Court of Civil Appeals of Texas, we observe that the Supreme Court of Texas did not have occasion to consider Kelly's Case. The ruling in Savage v. People's B. & L. Association, like the ruling in the Holyoke Case and in the Sinteff Case, was merely that the board of directors of the association could not breach the contract with a shareholder by amending the by-laws of the association.

The plaintiff in this case cites also the decision rendered by the Court of Appeal of Louisiana, for the Second Circuit, in Harris v. Monroe Building & Loan Association, 154 So. 503. That case, however, is now pending in this court on a writ of review, which was issued today.

The plaintiff quotes and relies upon an expression in the opinion rendered in State ex rel. Orlando v. Reliance Homestead Association, supra, viz: "By giving to shareholders the right to withdraw their shares and by prescribing the method by which funds are to be made available for the payment of their claims when their applications to withdraw are filed, the lawmaker gave to them a privilege which cannot be denied them". The court meant that the privilege could not be denied them (the withdrawing shareholders) by the court—not that it could not be denied them [fol. 69] by an act of the Legislature. The case was decided before the act of 1932 came into effect, and the only question in the case, as stated in the opinion, was whether the association was required by Section 7 of act of 1902, as amended by the act of 1916, to apply one-half of the *gross*

receipts, or only one-half of the *net* receipts, to the payment of withdrawals when they were in arrears sixty days. Hence the expression in the opinion, which the plaintiff here relies upon, is not at all appropriate to this case.

Counsel for the plaintiff argue that the principle which we have announced as controlling the decision of this case is not applicable because the act of 1932 vests almost unlimited authority and discretion in the board of directors, in the matter of determining what proportion of the receipts of an association shall be applied to the payment of applications for withdrawal, and what proportion shall be applied to the payment of dividends to continuing members. It is conceded: "Such power might have been granted to a court, to a banking department, to a public board or commission". But it is contended that such power cannot be granted legally to a board of directors, composed of continuing members of an association, and having, therefore, a personal interest in conflict with that of the withdrawing members, in the matter of appropriating the receipts of the association to the payment of dividends, rather than to the payment of applications for withdrawal. The Legislature, in its judgment, evidently, concluded that there was no great danger of an abuse of the authority which was given to the boards of directors of building and loan associations. The interests of all of the shareholders, including, of course, the withdrawing shareholders, are protected from abuse of authority on the part of the board of directors, by the fact that the statute has placed all building and loan associations under the supervision and control of the state bank commissioner. We called attention to that in State ex rel. Italo-American Homestead Asso- [fol. 70] ciation, supra. Section 64 of the statute so provides, and requires every building and loan association to make semi-annual reports to the commissioner; and section 65 provides: "Twice every year or *a*ftener, if he deems it necessary, the Commissioner shall make an examination into the affairs of each such association". And Section 67 imposes upon the commissioner the duty of seeing that the officers and directors of building and loan associations perform their duties faithfully; and the same section of the statute empowers the commissioner to enforce his orders in that respect, under penalty of liquidation of the association. Aside from these considerations, a withdrawing member

of a building and loan association, as we have pointed out, may withdraw his application at any time, and have all of the advantages enjoyed by the other continuing members. Hence there is no unfair discrimination, or denial of the equal protection of the laws in that respect.

Our conclusion is that the plaintiff in this case has no cause or right of action.

The judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and his suit dismissed at his cost.

Odom, J., dissents.

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[fol. 71] IN SUPREME COURT OF LOUISIANA

No. 33065

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Camille V. Treigle, plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article 1 of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said

sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

5. That this Court erred in holding that there is nothing [fol. 72] "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested rights of property is protected by the Fourteenth Amendment to the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

II

Petitioner shows further that he will file in connection with this petition, briefs in support thereof: and that for the reasons herein above set forth and to be amplified in [fol. 73] the briefs, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Alex. W. Swords, (Signed) A. Giffen Levy, (Signed) Hugh M. Wilkinson, Attorneys for Petitioner, Camille V. Treigle. (Signed) Alex. W. Swords, (Signed) A. Giffen Levy, of Counsel.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fols. 74 & 75] IN SUPREME COURT OF LOUISIANA

No. 33065

CAMILLE V. TREIGLE

vs.

ACME HOMESTEAD ASSOCIATION

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

[fol. 76] IN SUPREME COURT OF LOUISIANA

No. 33065

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Camille V. Treigle, respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 21, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner of $5,000.00 of the full paid capital stock of Acme Homestead Association, a building and loan Corporation, organized under the laws of the State of Louisiana, he had in accordance with its charter and by-laws and the law of the State of Louisiana then in force, notified said Homestead Association of his intention to withdraw his said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Acme Homestead Association and petitioner obliging said Association to repay to petitioner his said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to his said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932 and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of his [fol. 77] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Acme Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Acme Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereunder, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Acme Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisi-

ana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 78] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of him, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy, Attorneys for Camille V. Treigle, Petitioner and Proposed Appellant.

New Orleans, Louisiana, June 21, 1935.

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[fol. 79] IN SUPREME COURT OF LOUISIANA

No. 33065

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Camille V. Treigle, plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932 and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said Sections to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 80] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these Sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, and of which vested right of property he is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan associa-

tion, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana in violation of Article I Section 10 of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said Sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 81] ing Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said Sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the Police Power, and therefore, unconstitutional.

For which errors, Camille V. Treigle prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause be reversed, and judgment rendered in favor of the said Camille V. Treigle.

Dated June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy,
Counsel for Camille V. Treigle.

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[fol. 82] IN SUPREME COURT OF LOUISIANA

No. 33065

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Camille V. Treigle for an appeal in the above suit to the Supreme Court of the United States from

the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Camille V. Treigle shall give good and sufficient security in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make his plea good, he shall answer all costs,

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Andrew Gaffney, of New Orleans, Louisiana as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21, 1935.

(Signed) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

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[fols. 83-92] Bond on appeal for $1,000.00, approved and filed June 21, 1935, omitted in printing.

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[fol. 93] Citation in usual form, showing service on D. H. Theard, omitted in printing.

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[fol. 94] IN SUPREME COURT OF LOUISIANA

No. 33065

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has

been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21, 1935.

(Signed) Alex W. Swords, (Signed) A. Giffen Levy, Counsel for Appellant. (Signed) Delvaille H. Theard, Counsel for Appellee.

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[fol. 95] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 96] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED— Filed July 26, 1935

Comes now Camille V. Treigle, the appellant in the above entitled cause, and states that he adopts his assignment of error as his statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

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| 2. Defendant's answer and exception | 11 to 18 |
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| 4. Reasons of District Judge | 32 to 40 |
| 5. District Court's decree | 41 |
| 6. Opinion and decree of Supreme Court of Louisiana | 49 to 70 |
| 7. Application of Camille V. Treigle for rehearing | 71 to 73 |
| 8. Denial of application for rehearing April 1, 1935 | 74 |

| Title of Paper | Record Pages |
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| 9. Petition for appeal to this Court | 76 to 78 |
| 10. Assignment of errors | 79 to 81 |
| 11. Statement of Basis of Jurisdiction | 85 to 91 |
| 12. Order allowing appeal | 82 |
| 13. Bond for appeal | 83 to 84 |
| 14. Citation of appeal and return | 93 |
| 15. Agreement on Transcript | 94 |
| 16. Proof of service required by Rule 12, paragraph 2 | 92 |
| 17. Certificate of Clerk Supreme Court of Louisiana | 95 |
| 18. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed. | |

July 23, 1935.

Alex. W. Swords, A. Giffen Levy, Counsel for Camille V. Treigle, Appellant.

Service acknowledged this July 23, 1935.

Devaille H. Theard, Attorney for Defendant Acme Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 97] [File endorsement omitted.]

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Endorsed on cover: File No. 39,841. Louisiana, Supreme Court. Term No. 287. Camille V. Treigle, Appellant, vs. Acme Homestead Association. Filed July 26, 1935. Term No. 287, O. T. 1935.

CLERK'S COPY.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1935**

## No. 288

CAMILLE V. TREIGLE, APPELLANT,

*vs.*

THRIFT HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 26, 1935.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1935

# No. 288

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CAMILLE V. TREIGLE, APPELLANT,

*vs.*

THRIFT HOMESTEAD ASSOCIATION.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

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**IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

Division "A"—Docket 5

No. 199,503

CAMILLE V. TREIGLE

versus

THRIFT HOMESTEAD ASSOCIATION

PETITION—Filed October 21, 1932

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Camille V. Treigle, of the full age of majority and a resident of the City of New Orleans, with respect represents:

I

That Thrift Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for and governing the creation of homestead and building and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

II

That petitioner is the owner of Twenty-two (22) shares of the full paid stock of the Thrift Homestead Association, of the face value of One Hundred ($100.00) Dollars each represented by Certificate No. 18 for ten shares (10), dated the 14th day of March, 1923, and Certificate No. 1324, for twelve shares, dated the 14th March, 1927, and were issued and delivered to your petitioner on said dates; that the aggregate of the par or face value of said certificates is the sum of Two Thousand, Two Hundred ($2,200.00) Dollars.

III

That said shares of stock are withdrawable shares, and [fol. 2] were acquired by your petitioner subject to all of the

rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the appli*ance* provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of his investment in said Homestead Association and of the acquisition of his shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, *and between full paid shareholders and other shareholders, and between full paid shareholders,* and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, an implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and fully as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of his investment, and acquisition of the full paid stock of said Association, as heretofore alleged, among the rights accord*ed* to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of said Association; all of which said rights and obligations are embodied and contained in the provisions of Section 7 of Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in said Act, and which are as follows, to-wit:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be

entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, [fol. 3] as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the numbers of shares held by him."

VI

Your peititioner avers that on the 19th day of May, in the year 1932, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by certificates No. 18 and 1324, to-wit, the sum of Two Thousand, Two Hundred ($2,200.00) Dollars, and your petitioner annexed a copy of his said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the date of petitioner's notice of intention to withdraw his investments from said Association, and his said application being then unsatisfied, either in whole or in part, the rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section and Act, became fixed and vested; that thereforth it became the mandatory duty and obligation of said Association, its officers and directors, to set aside one-half of the

[fol. 4] receipts of said funds solely to the discharge and liquidation, in order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, and the term "receipts" interpreted to mean net receipts, and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlando versus Reliance Homestead Association, reported in Southern Reporter, Vol. 142, page 146, 174 La. Ann. 980.

VIII

That petitioner believes and, so believing, avers that after the date of his notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default sixty (60) days after the application for withdrawal, in whole or in part, on the part of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner himself, the defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, hereinafter more particularly referred to, and purporting to change procedure.

X

That after your petitioner, by his application to withdraw under Section 7 of Act 280 of 1916, had established himself in his proper rank and place, according to the date of his application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and

had waited in vain from the time of his application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for payment of the Two Thousand Two Hundred ($2,200.00) Dollars, represented by his certificates, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in Homestead shares were endeavoring to have the said 1932 Legislature pass a new homestead law which would seriously [fol. 5] alter the status of petitioner to his disadvantage, and would destroy his legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of his shares in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping out the mandatory requirements of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular detailed, depriving petitioner of legal rights acquired by him under the laws applicable to his investment; that petitioner not only did not acquiesce in said plan to change the law applicable to his investment, but appeared, through counsel, before the committees of the Legislature and urged the injustice and illegality of so depriving him of the rights he had acquired under the existing law, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, generally, said Act of 140 of 1932 supersedes Act 280 of 1916, and purports to permit of new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the mandatory provisions of former laws, and particularly by Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and violative of his constitutional rights:

(a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts towards the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of new receipts therefore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and [fol. 6] Act 280 of 1916.

(b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpledged stock, inaugurates an innovation that is experimental and destructive of mutuality upon which such institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and the disposition of a valuable asset of said Association in such a manner as can in no way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said associations to infringe upon the one-half of net receipts formerly to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of pay-

ment, and abolishes the system of payment in full in the order filed; creates a discriminatory provision for the payment in full in the order filed; creates a discriminatory provision for the payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the payment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association:

(e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

[fol. 7] XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5, Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of the State of Louisiana for the year 1921, and are therefore null and void insofar as they are sought to be made retrospective in their applicability to petitioner or his withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of ninety (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions and law effecting them, much in the same manner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of his rights now declared upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting him, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions of law retroactively upon himself, and does call upon this Honorable Court to take notice of his refusal to acquiesce and to, therefore, protect him in the maintenance of his rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law than by the process of injunction to restrain and prohibit said Association from applying and following the unconstitutional permissive and obligatory provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in the manner and re- [fol. 8] spects hereinbefore complained of and enumerated in detail under Article XII of this petition, insofar as they may disturb the status and affect the statutory and contract rights of petitioner and the investment which petitioner has made in said Association; that unless said Association is enjoined from following the course of conduct either permitted or made obligatory by said Sections of Act 140 of

1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Thrift Homestead Association, through its proper officer, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction should not issue herein, restraining and forbidding the Thrift Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of his investment in said Association, or in such a manner as to change, alter or impair the rights accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

Petitioner further prays that the Thrift Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment herein in avor of petitioner, Camille V. Treigle, and against Thrift Homestead Association, said judgment decreeing that Sections 53, 54, 55. 56 and 57 of Act 140 of 1932, insofar only as they may or do affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; said judgment further decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner, by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his investment of Two Thousand Two Hundred ($2,200.00) Dollars, represented by certificate No. 18 for ten (10) shares and certificate No. 1324 for twelve (12) shares in said Homestead As-
[fol. 9] sociation. Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such further and general relief as petitioner

might be entitled to by law, equity and the nature of the case.

By his attorneys, (Signed) Alex M. Swords, (Signed) Hugh M. Wilkinson. (Signed) Alex W. Swords, Trial Attorney.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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ORDER

Let a rule "nisi" issue herein, and let the defendant, Thrift Homestead Association, through its proper officer, be and it is hereby ordered to show cause on the 31st day of October, 1932, at the hour of 10:30 o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

New Orleans, La., October 21, 1932.

(Signed) Walter L. Gleason, Judge.

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[fol. 10] EXHIBIT 1 TO PETITION

May 19, 1932.

Thrift Homestead Association, Baronne Building, New Orleans, La.

GENTLEMEN:

I am the owner of the following certificates, representing 22 shares of stock in your Association:

| | |
|---|---|
| Certificate # 18 | 10 shares |
| Certificate # 1324 | 12 shares |

I give this notice that I desire to withdraw the funds represented by said certificates from your Association.

I would thank you to acknowledge receipt hereof.

Very truly yours, C. V. Treigle.

CVT.AK.

[fol. 11] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

[Title omitted]

ANSWER—Filed January 11, 1933

Now into Court, through undersigned counsel, comes the Thrift Homestead Association, defendant, and, for answer to the petition of Camille V. Treigle, says:

I

Respondent denies the averments of Paragraph I, except as hereinafter admitted.

Respondent is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled in the City of New Orleans.

II

Respondent admits the allegations of Paragraph II.

III

Answering Paragraph III, respondent admits that said shares are withdrawable shares under the conditions hereinafter set forth.

Respondent shows that the other averments of Paragraph III are conclusions of law, which respondent is not required to answer. In the alternative, if any averments of—are involved in said paragraph said averments of—are denied.

IV

Answering Paragraph IV, respondent shows that the averments of the said paragraph constitute conclusions of law, which respondent is not required to answer; and, if any facts are involved in said paragraph, then respondent denies said facts.

V

Answering Paragraph V, respondent admits that the shares of petitioner are withdrawable shares; and respondent shows that the other averments of the paragraph

are conclusions of law, which respondent is not required to answer. If any averments of — are embodied in said paragraph, the said averments of — are denied.

[fol. 12]

VI

Respondent admits the averments of Paragraph VI.

VII

Answering Paragraph VII, respondent shows that said Paragraph VII contains mere conclusions of law, which respondent is not required to answer; and if any averments of fact are contained in said paragraph, the said averments are denied.

VIII

Respondent denies the allegations of Paragraph VIII except as hereinafter admitted.

Respondent avers that no withdrawals have been paid since October 13, 1931, except emergency loans totalling $900.00 which were paid under the provisions of Section 54 of Act No. 140 of 1932.

IX

Respondent denies the averments of Paragraph IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law; and respondent again reiterates that no withdrawals have been paid since October 13th, 1931, except emergency loans totalling $900.00 which were paid under the provisions of Section 54 of Act No. 140 of 1932.

X

Answering Paragraph X, respondent denies the averments of fact and conclusions of law stated in said paragraph, except as hereinafter admitted.

Respondent admits the enactment of Act 140 of 1932 by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

XI

Answering Paragraph XI, respondent shows that the said paragraph contains only conclusions of law, which re-

spondent is not required to answer. If any averments of fact are contained in said paragraph, the same are denied.

XII

Paragraph XII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said averments are denied.

XIII

Paragraph XIII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said averments are denied.

[fol. 13]

XIV

Respondent admits that Act 140 of 1932 of the Legislature of Louisiana became effective on July 27, 1932.

Respondent denies the other averments of law and of fact contained in Paragraph XIV of plaintiff's petition.

XV

Paragraph XV contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said averments are denied.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions, organized and doing business not for profit, but to enable wage-earners to own their homes. Said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control. In Louisiana, the status of these associations is, and has for many years been, reflected in numerous provisions of the statutes and in many decisions of the courts. In bar of the claims of the petitioner herein, respondent pleads the provisions of Act No. 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

In Louisiana, at the close of the year 1930 (last available date), there were one hundred two (102) building and loan associations, with a membership of 200,930 and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations

was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets *over the previous year in assets* of $128,964,-939.00 and in membership of 225,545. The building and loan associations in Louisiana, at the close of 1930, owned mortgage loans totalling $161,525,736.00, invested in homes and representing, with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State. The outstanding mortgage loans in building and loan associations in the United States, for the year 1930, represented a total of $7,764,034,764.00. The total number of depositors in savings banks in the United States for the year 1930 was 11,895,075, and the total assets of said banks, at the end of that year, amounted to $9,190,969,000.00. In building and loan associations in the United States for that year, there were 12,350,928 members, and the total assets of the said building and loan associations in that year [fol. 14] were $8,828,611,925.00.

Your respondent shows that, on or about June 1st, 1932, it had 1,962 members, with total outstanding mortgage loans of $1,135,900.00, and total assets of $1,597,698.18, and a waiting list consisting of 249 applicants, representing $145,025.86, upon which withdrawal list respondent has not been able to make any payments since October 13th, 1931, except the emergency loans hereinabove referred to, totalling $900.00.

Since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. In 1929 it became impossible under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere. Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would equitably take care of the applications of members of said associations, and, at the same time, protect and safeguard the interests of the public in said associations.

Under normal business conditions, building and loan associations in this State, and elsewhere, were operated without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence

and without regard to the individual needs of the applicants or the amounts of their applications for withdrawal. Under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

But these conditions were fundamentally altered by the present depression. As there was great unemployment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. In this State, about twelve months ago, conditions reached the point where, owing to the great public distress and poverty, few had money to invest in building and loan associations, and all receipts from the public or wage-earners ceased absolutely. This same condition made it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. At the same time, the normal collections from borrowers came almost to a standstill, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their [fol. 15] homes. The associations were compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be resold at a loss. When the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

The absence of funds from investors, the necessity of repaying bank loans — of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, made it necessary for the associations to postpone and delay the payment of withdrawal applications, almost indefinitely. The lack of —— of real estate led to a sharp drop in prices, greatly intensifying the difficulties faced by respondent and other associations.

In every association, the shareholders nevertheless continued to present applications for withdrawals; and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could expect to receive in cash the repayment and return of the

monies invested by them in said associations; this being especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawals would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

There were also many shareholders who were particularly in great need of the cash repayment of their small savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in several cases many years, before receiving the return of their investments.

The new statute (Act No. 140 of 1932), through the medium of a new, trial and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. This new plan does not displace any application for withdrawal, but, for the general good, and in the interest of the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

The said statute was recommended to the Legislature by [fol. 16] the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. The State Banking Department for thirty years, as required by law, has been recommending basic changes in the organization, operation and management of building and loan associations. Many of these recommendations have been adopted by the Legislature, and enacted into law. All of said recommendations and new legislative provisions have been complied with by the building and loan associations of this State. Indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of building and loan associations, or the right of the Legislature, in its direction, to regulate, or to suppress altogether, the business of building and loan associations.

The system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholder may rush in and get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises considered, respondent prays that the demand of the plaintiff may be denied, and that plaintiff's suit be dismissed, with costs.

And for all general and equitable relief.

(Sg.) A. D. Danziger, P. H. Stern, Attorneys for Defendant. (Sg.) D. H. Theard, Legier, McEnerny & Waguespack, Carroll, McCall & Plough, Weiss, Yarrut & Stich, J. G. Dempsey, D. J. Murphy, Hyman Mithoff, of Counsel.

[fol. 17] *Duly sworn to by Paul J. Thomson. Jurat omitted in printing.*

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[fols. 18-23a] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,503

[Title omitted]

DEFENDANT'S EXCEPTIONS—Filed June 13th, 1933

Into court comes the Thrift Homestead Association, defendant, and excepts to the petition of the plaintiff herein, on the ground that the petition herein discloses no right of action and no cause of action.

Wherefore, the premises considered, exceptor prays that this exception may be maintained and that plaintiff's suit be denied and that this suit be dismissed at the cost of the plaintiff.

And for general and equitable relief.

(Signed) A. D. Danziger, P. H. Stern, D. H. Theard, Attys.

The undersigned certifies that, in his opinion, the foregoing exception is well founded in law and that the same has been filed in good faith, and not for delay.

(Signed) D. H. Theard.

[fols. 23b & 24] In Civil District Court of Orleans Parish

Charter & By-Laws of Thrift Homestead Ass'n—Filed June 1, 1934

* * * * * * *

(4) Shareholders shall have the right to withdraw from the association the amount paid in, together with the actual proportion of loss, if any, upon filing written notice of withdrawal, which shall be registered in the order received, and such withdrawals shall be paid in the order registered, but said association shall not be compelled to devote more than one-half the monthly receipts for the purpose of paying withdrawals, but the board may, in its discretion, use more than one-half the monthly receipts for the purpose of paying the matured or withdrawn shares.

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[fol. 25] In Civil District Court of Orleans Parish, Division "D"

No. 199,497

Treigle Sash Factory, Inc.

vs.

Conservative Homestead Assn.

Reasons for Judgment—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead Association, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until 1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no [fol. 26] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable to the demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchasing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw are filed. Whenever the proportion of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desiring to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stockholders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 27] doubt led most of the subscribers to make the investments in the respective homesteads, wihch during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act

140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a fundamental part of the form of government under which both the federal and state governments function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 28] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent, that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I

[fol. 29] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two-fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New

Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corporations. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the States as to the manner and form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein [fol. 30] homesteads can no longer borrow from banks with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in their brief an expression from Chief Justice O'Niell, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enact-

ment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in mind, it will be judicially assumed that it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given case, the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applications up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also paying the withdrawing stockholders in the order of their application for withdrawal, it provides that they shall be paid only twenty-five per centum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five per centum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 31] per centum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him under the Act of 1916 are paid out twenty-five per centum while his seventy-five per centum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the order of precedence as stipulated in the Act of 1916; and, through the exercise of this discretion, the board of directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is further subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless

this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present statute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future stockholders, one can certainly not, by a legisla- [fol. 32] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to

make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing members, except after provision was made for the setting aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 33] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

[fols. 34–40] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

Division "D"—Docket 5

No. 199,503

CAMILLE V. TREIGLE

vs.

THRIFT HOMESTEAD ASSOCIATION

JUDGMENT

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Camille V. Treigle, and against defendant, Thrift Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said defendant is restrained and enjoined from in any manner carrying into effect the provisions of Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $250.00.

Judgment rendered and read in open Court, May 16th, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Signed) Walter L. Gleason, Judge.

[fol. 41] IN SUPREME COURT OF LOUISIANA

OPINION AND JUDGMENT

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 33071

CAMILLE V. TREIGLE

VS.

THRIFT HOMESTEAD ASSOCIATION

Appeal from the Civil District Court for the Parish of Orleans, Walter L. Gleason, Judge

This is one of the cases mentioned in the opinion rendered today in the case of Camille V. Treigle v. Acme Homestead Association, No. 33,065. For the reasons given in that case, the judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and his suit dismissed at his cost.

Odom, J., dissents.

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[fol. 42] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Camille V. Treigle, plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial

to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article I of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

5. That this Court erred in holding that there is nothing [fol. 43] "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested right of property is protected by the Fourteenth Amendment of the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore,, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that

these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

II

Petitioner shows further that he will file in connection with this petition briefs in support thereof; and that for the reasons herein above set forth and to be amplified in [fol. 44] the briefs, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Alex W. Swords, (Signed) A. Giffen Levy, (Signed) Hugh M. Wilkinson, Attorneys for Petitioner, Camille V. Treigle. (Signed) Alex. W. Swords, (Signed) A. Giffen Levy, of Counsel.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fols. 45 & 46] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

[fol. 47] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES —Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Camille V. Treigle respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 21, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner of $2,200.00 of the full paid capital stock of Thrift Homestead Association, a building and loan corporation, organized under the laws of the State of Louisiana, he had, in accordance with its charter and by-laws and the law of the State of Louisiana then in force, notified said Homestead Association of his intention to withdraw his said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Thrift Homestead Association and petitioner, obliging said Association to repay to petitioner his said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to his said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932 and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of his [fol. 48] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Thrift Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Thrift Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereunder, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Thrift Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisi-

ana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 49] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of him, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy, Attorneys for Camille V. Treigle, Petitioner and Proposed Appellant.

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[fol. 50] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Camille V. Treigle, plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 51] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawal of 50% of net receipts, and of which vested right of property he is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana in violation of Article I, Section 10, of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 52] ing Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and therefore unconstitutional.

For which errors, Camille V. Treigle prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause, be reversed, and judgment rendered in favor of the said Camille V. Treigle.

Dated June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy,
Counsel for Camille V. Treigle.

[fol. 53] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Camille V. Treigle for an appeal in the above suit to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Camille V. Treigle shall give good and sufficient security, in the sum of One Thousand ($1,000.00) Dollars, that said appelllant shall prosecute said appeal to effect, and if said appellant fail to make his plea good he shall answer all costs.

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Andrew Gaffney, of New Orleans, Louisiana, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21, 1935.

(Sgd.) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

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[fols. 54-63] Bond on appeal for $1,000.00, approved and filed June 21, 1935, omitted in printing.

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[fol. 64] Citation in usual form, showing service on D. H. Theard, omitted in printing.

[fol. 65] IN SUPREME COURT OF LOUISIANA

No. 33071

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21st, 1935.

(Signed) Alex W. Swords, (Signed) A. Giffen Levy, Counsel for Appellant. (Signed) Delvaille H. Theard, Counsel for Appellee.

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[fol. 66] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 67] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 26, 1935

Comes now Camille V. Treigle, the appellant in the above entitled cause, and states that he adopts his assignment of error as his statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

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| 9. Petition for appeal to this Court | 47 to 49 |
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| 11. Statement of Basis of Jurisdiction | 56 to 62 |
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| 17. Certificate of Clerk Supreme Court of Louisiana | 66 |
| 18. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed. | |

Alex. W. Swords, A. Giffen Levy, Counsel for Camille V. Treigle, Appellant.

Service acknowledged this July 23, 1935.

Delvaille H. Theard, Attorney for Defendant Thrift Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 68] [File endorsement omitted.]

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Endorsed on cover: File No. 39,842. Louisiana, Supreme Court. Term No. 288. Camille V. Treigle, Appellant, vs. Thrift Homestead Association. Filed July 26, 1935. Term No. 288, O. T. 1935.

CLERK'S COPY.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1935

## No. 289

TREIGLE SASH FACTORY, INC., APPELLANT,

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

FILED JULY 26, 1935.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1935

## No. 289

TREIGLE SASH FACTORY, INC., APPELLANT,

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Nov. 20, 1935.

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# IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

Division "D"—Docket 5

No. 199,497

TREIGLE SASH FACTORY, INC.

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION

PETITION—Filed October 21, 1932

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of the Treigle Sash Factory, Inc., a corporation organized under the laws of the State of Louisiana, and domiciled and doing business in the City of New Orleans, with respect represents:

I

That Conservative Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for and governing the creation of hoestead and building and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

[fol. 2]

II

That petitioner is the owner of 202 shares of the full-paid stock of the Conservative Homestead Association, of the face value of One Hundred ($100.00) Dollars each, [fol. 2] represented by certificates as follows: No. 19,732 for fifty (50) shares, No. 19,733 for fifty (50) shares, No. 19,734 for fifty (50) shares, No. 19,735 for fifty (50) shares, and No. 19,736 for two (2) shares, all of which certificates were issued and delivered to your petitioner prior to its application to withdraw funds hereinafter referred to; that

the aggregate of the par or face value of said certificates is the sum of Twenty Thousand Two Hundred Dollars ($20,200.00).

III

That said shares of stock are withdrawable shares, and were acquired by your petitioner subject to all of the rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the applicable provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of its investment in said Homestead Association and of the acquisition of its shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, an implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and fully as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of its investment and acquisition of the full paid stock of said Association, as heretofore alleged, among rights accorded to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of said Association; all of which said rights and obligations are embodied and contained in the provisions of Section 7 of

Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in Section and Act, [fol. 3] and which are as follows:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

VI

Your petitioner avers that on the 31st day of July, in the year 1931, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by certificates Nos. 19732, 19733, 19734, 19735 and 19736, to-wit, the sum of Twenty Thousand and Two Hundred ($20,200.00) Dollars, and your petitioner annexes hereto and makes part hereof, as if set out in full herein, a copy of its said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the

[fol. 4] date of petitioner's notice of intention to withdraw its investiments from said Association, and its said application being then unsatisfied, either in whole or in part, the rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section and Act, became fixed and vested; that thenceforth it became the mandatory duty and obligation of said Association, its officers and directors, to set aside one-half of the receipts of said Association, and to apply said funds solely to the discharge and liquidation, in the order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, and the term "receipts" interpreted to mean net receipts, and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlando versus Reliance Homestead Association.

VIII

That petitioner believes and, so believing, avers that after the date of its notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default sixty (60) days after the application for withdrawal, in whole or in part, of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner himself, the said defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead Association has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, here-

inafter more particularly referred to, and purporting to change said procedure.

X

That after your petitioner, by his application to withdraw under Section 7 of Act 280 of 1916, had established himself in its proper rank and place, according to the date of its application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and [fol. 5] had waited in vain from the time of its application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for the payment of the Twenty Thousand Two Hundred ($20,200.00) Dollars, represented by its certificates, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in homestead shares were endeavoring to have the said 1932 Legislature pass a new homestead law which would seriously alter the status of petitioner to its disadvantage, and would destroy its legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of its shares in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping out the mandatory requirement of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular hereinafter detailed, depriving petitioner of legal rights acquired by it under the law applicable to its investment; that petitioner not only did not acquiesce in said plan to change the law applicable to its investment, but appeared, through counsel, before the committees of the Legislature and urged the injustice and illegality of so depriving it of the rights it had acquired under the existing law, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, generally, said Act 140 of 1932 supersedes Act 280 of 1916, and purports to permit new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and

loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these things retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the mandatory provisions of former laws, and particularly by Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and [fol. 6] violative of its constitutional rights:

(a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts toward the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of net receipts theretofore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and Act 280 of 1916.

(b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpledged stock, inaugurates an innovation that is experimental and destructive of the principal of mutuality upon which such institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and of the disposition of a valuable asset of said Association in such manner as can in no way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said association to infringe upon the one-half of net receipts formerly required to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner and method of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of payment, and abolishes the system of payment in full in the order filed; creates a discriminatory provision for payment in full in the order filed; creates a discriminatory [fol. 7] provision for payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the payment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association.

(e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

## XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 of 1932 deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of

petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5, Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of the State of Louisiana of 1921, and are therefore null and void insofar as they are sought to be made retrospective in their applicability to petitioner or its withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided [fol. 8] by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of nienty (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions of law effecting them, much in the same manner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of its rights —— upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting it, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions of law retroactively upon itself, and does call upon this Honorable Court to take notice of its refusal to acquiesce and to, therefore, protect it in the maintenance of its rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law than by the process of injunction to restrain and prohibit said Association from applying and following the unconstitutional permissive and obligatory provisions of Sections 53,

54, 55, 56 and 57 of Act 140 of 1932, in the manner and respects hereinbefore complained of and enumerated in detail under Article XII of this petition, insofar as they may disturb the status and effect the statutory and contract rights of petitioner and the investment which petitioner has made in said Association; that unless said Association is enjoined from following the course of conduct either permitted or made obligatory by said Sections of Act 140 of 1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Conservative Homestead Association, through its proper officers, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction should not issue herein, restraining and forbidding the Conservative Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of his investment in said Association in such a [fol. 9] manner as to change or impair —— accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

Petitioner further prays that the Conservative Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment in favor of petitioner, Treigle Sash Factory, Inc., and against Conservative Homestead Association, said judgment decreeing that Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, insofar only as they may affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; said judgment decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his

investment of Twenty Thousand Two Hundred ($20,200.00) Dollars, represented by certificates Nos. 19732, 19733, 19734, 19735 and 19736 in said Homestead Association.

Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such further and general relief as petitioner might be entitled t by law, equity and the nature of the case.

By its attorneys, (Sg.) Alex. W. Swords, Hugh M. Wilkinson. (Sg.) Alex. W. Swords, Trial Attorney.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fol. 10] ORDER

Let a rule "nisi" issue herein, and let the defendant, Conservative Homestead Association, through its proper officers, be and it is hereby ordered to show cause on the 31st day of October, 1932, at the hour of 10:30 o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

New Orleans, La., October 21, 1932.

(Sg.) Walter L. Gleason, Judge.

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[fol. 11] EXHIBIT 1 TO PETITION

Copy

New Orleans, La., July 31, 1931.

Conservative Homestead Association, Maison Blanche Bldg., New Orleans, La.

GENTLEMEN:

We are the owners of the following certificates, representing 202 shares of stock in your Association:

| | | | |
|---|---|---|---|
| Certificate | # 19736 | 2 | shares |
| " | # 19732 | 50 | " |
| " | # 19733 | 50 | " |
| " | # 19734 | 50 | " |
| " | # 19735 | 50 | " |

We give this notice that we desire to withdraw the funds represented by said certificates from your Association.

We would thank you to acknowledge receipt hereof, and let us know whether they have been any fines, charges, expenses and losses to the time of this notice.

Yours very truly, Treigle Sash Factory, Inc.,
—— ——, President.

CVT:jms.

P. S.—We would appreciate it if you would let us know how many withdrawals there are ahead of us.

Registered for Withdrawal No. 7301 A, date 7/31/31.
Con. Hmstd. Assn.

[File endorsement omitted.]

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ANSWER—Filed January 4th, 1933

[fol. 12] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,497

[Title omitted]

Into Court comes the Conservative Homestead Association, defendant herein, and for answer to the petition of Treigle Sash Factory, Inc.,

I

Respondent denies the averments of Paragraph I, except as hereinafter admitted.

Respondent is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled and doing business in the City of New Orleans.

II

Respondent admits the allegations of Paragraph II.

III

Answering Paragraph III, respondent admits that said shares are withdrawable shares.

Respondent shows that the other averments of Paragraph III are conclusions of law, which respondent is not required to answer. In the alternative, if any facts are involved in said paragraph, said facts are denied.

IV

Answering Paragraph IV, respondent shows that the averments of the said paragraph constitute conclusions of law, which respondent is not required to answer; and, if any facts are involved in said paragraph, then respondent denies said facts.

V

Answering Paragraph V, respondent admits that the shares of petitioner are withdrawable shares; and respondent shows that the other averments of the said paragraph are conclusions of law, which respondent is not required to [fol. 13] answer. If any facts are embodied in said paragraph, the said facts are denied.

VI

Respondent admits the averments of Paragraph VI.

VII

Answering Paragraph VII, respondent shows that said paragraph contains mere conclusions of law, which respondent is not required to answer; and if any averments of fact are contained in said paragraph, the said averments are denied.

VIII

Respondent admits the averments of Paragraph VIII, but shows that all such applications for withdrawal by other members in said Association had been applied for and made previous to the application of the withdrawal of the petitioner herein, and were paid by respondent association, when reached on the withdrawal list, in strict accordance with law; and respondent further shows that numerous applications for withdrawal antedating petitioner's application herein sued on were never reached on respondent's list, and remain unpaid.

IX

Respondent denies the averments of Paragraph IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law.

X

Answering Paragraph X, respondent denies the averments of fact and conclusions of law stated in said paragraph, except as hereinafter admitted.

Respondent admits the enactment of Act 140 of 1932 by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

XI

Answering Paragraph XI, respondent shows that the said paragraph contains only conclusions of law, which respondent is not required to answer. If any statements of fact are contained in said paragraph, the same are denied.

XII

Paragraph XII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIII

[fol. 14] Paragraph XIII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIV

Respondent admits that Act 140 of 1932 of the Legislature of Louisiana became effective on July 27, 1932.

Respondent denies the other averments of law and of fact contained in Paragraph XIV of plaintiff's petition.

XV

Paragraph XV contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions, organized and doing business not for profit, but to enable wage-earners to own their homes. Said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control. In Louisiana, the status of these associations is, and has for many years been, reflected in numerous provisions of the legislative statutes and in many decisions of the courts. In bar of the claims of the petitioner herein, respondent pleads the provisions of Act No. 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

In Louisiana, at the close of the year 1930 (last available date), there were one hundred two (102) building and loan associations, with a membership of 200,930 and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets of $128,964,939.00 and in membership of 225,545. The building and loan association in Louisiana, at the close of 1930, owned mortgage loans totalling $161,525,736.00, invested in homes and representing, with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State. The outstanding mortgage loans in building and loan associations in the United States, for the year 1930, represented a total of $7,764,034,674.00. The total number of depositors in savings banks in the United States for the year 1930 was 11,895,075, and the total assets of said banks, at the end of that year, amounted to $9,190,969,000.00. In building and loan associations in [fol. 15] the United States for that year, there were 12,350,928 members, and the total assets of the said building and loan associations in that year were $8,828,611,925.00.

Your respondent shows that, on or about July 27th, 1932, it had 6,742 members, with total outstanding mortgage loans of $4,720,200.00, and total assets of $6,513,684.81, and a waiting list of 1,078 applicants, representing 711,632.71, upon which withdrawal list respondent has not been able to make any payments since 22nd day of April of 1931,

and that respondent has not been able, since that time, to make any payments upon its said withdrawal list.

Since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. In 1929 it became impossible under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere. Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would equitably take care of the applications of members in such associations, and, at the same time, protect and safeguard the interests of the public in said associations.

Under normal business conditions, building and loan associations in this State, and elsewhere, were operated without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence and without regard to the individual needs of the applicants or the amounts of their applications for withdrawal. Under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

But these conditions were fundamentally altered by the present depression. As there was great unemployment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. In this State, about twelve months ago, conditions reached the point where, owing to the great public distress and poverty, no one had any money which could be invested in building and loan associations, and all receipts from the investing public or wage-earners —— absolutely. This same condition made [fol. 16] it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. At the same time, the normal collections from borrowers came almost to a standstill, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their homes. The associations were

compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be resold at a loss. When the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

The absence of funds from investors, the necessity of repaying bank loans out of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, made it necessary for the associations to postpone and delay the payment of withdrawal applications, almost indefinitely.

In every association, the shareholders nevertheless continued to present applications for withdrawals; and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could expect to receive in cash the repayment and return of the monies invested by them in said associations; this being especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawals would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

There were also many shareholders who were particularly in great need of the cash repayment of their small savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in several cases many years, before receiving the return of their investments.

The new statute (Act No. 140 of 1932), through the medium of a new and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. This new plan does not displace any application for withdrawal, but, for the general good, and in the interest of the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

The said statute was recommended to the Legislature by [fol. 17] the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. The State Banking Department for thirty years, as required by law, has been recommending basic changes in the organization, operation and management of building and loan associations. Many of these recommendations have been adopted by the Legislature, and enacted into law. All of said recommendations and new legislative provisions have been complied with by the building and loan associations of this State. Indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of the building and loan associations, or the right of the Legislature, in its discretion, to regulate, or to suppress altogether, the business of building and loan associations.

The system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholder may rush in and get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises considered, respondent prays that the demand of the plaintiff may be denied, and that plaintiff's suit be dismissed, with costs.

And for all general and equitable relief.

(Sg.) Weiss, Yarrut & Stich, Attorney-for Defendant.
(Sg.) D. H. Theard, Legier, McEnerny & Waguespack, Carroll, McCall & Plough, A. D. Danziger, P. H. Stern, J. G. Dempsey, D. J. Murphy, J. Zach Spearing, Scott E. Beer, H. Mithoff, Nat D. Cooke.

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[fol. 18] *Duly sworn to by Allen H. Generes. Jurat omitted in printing.*

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[fols. 19-24a] In Civil District Court for the Parish of Orleans

No. 199,497

[Title omitted]

Defendant's Exceptions—Filed June 13, 1933

Into Court comes the defendant Conservative Homestead Association which excepts to plaintiff's petition on the

ground that said petition discloses no right of action and no cause of action.

Wherefore, the premises considered exceptor prays that this exception may be maintained and the demand of the plaintiff be denied and this suit dismissed at the cost of the plaintiff.

And exceptor prays for all general and equitable relief.

(Sg.) D. H. Theard. Weiss, Yarrut and Stich, Attorneys.

The undersigned certifies that in his opinion the foregoing exceptions is well founded in law and that same has been filed in good faith and not for delay.

(Sg.) D. H. Theard.

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[fols. 24b & 25] In Civil District Court of Orleans Parish

Charter and By-Laws of Conservative Homestead Association—Filed June 1st, 1934

* * * * * * *

Shareholders shall have the right to wihtdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate.

* * * * * * *

Paid-Up Shares.—Paid-up shares may be issued by the President upon payment of same in full, in cash, at the time of issuance. This stock shall begin to draw dividends from the date of issue.

Paid-up stock shall be issued subject to the following terms and conditions:

1. Dividends are payable in cash semi-annually.

2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of with-

drawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in payment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association.

* * * * * * *

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[fol. 26] IN CIVIL DISTRICT COURT OF ORLEANS PARISH, DIVISION "D"

No. 199,497

TREIGLE SASH FACTORY, INC.

VS.

CONSERVATIVE HOMESTEAD ASSN.

REASONS FOR JUDGMENT—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead Association, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until 1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his shares or credits any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued. or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no [fol. 27] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable t othe demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchasing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw are filed. Whenever the proportion of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desiring to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stock-

holders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 28] doubt led most of the subscribers to make the investments in the respective homesteads, which during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act 140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a fundamental part of the form of government under which both the federal and state governments function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 29] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent, that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I [fol. 30] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to

above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corporations. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the States as to the manner and

form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein [fol. 31] homesteads can no longer borrow from banks with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in their brief an expression from Chief Justice O'Niell, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enactment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in mind, it will be judicially assumedthat it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given

case, the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applications up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also paying the withdrawing stockholders in the order of their applications for withdrawal, it provides that they shall be paid only twenty-five per centum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five per centum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 32] per centum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him under the Act of 1916 are paid out twenty-five per centum while his seventy-five per centum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the

order of precedence as stipulated in the Act of 1916, and, through the exercise of this discretion, the board of directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is further subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present stat-

ute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future stockholders, one can certainly not, by a legisla- [fol. 33] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing members, except after provision was made for the setting aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it

was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 34] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

[fols. 35-39] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA

Division "D"—Docket 5

No. 199,497

TREIGLE SASH FACTORY, INC.

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION

JUDGMENT

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Treigle Sash Factory, Inc., and against defendant, Conservative Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further ordered, adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said deefndant is restrained and enjoined from in any manner carrying into effect the provisions of Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $2,000.00.

Judgment rendered and read in open Court, May 16th, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Sg.) Walter L. Gleason, Judge.

[fol. 40] IN SUPREME COURT OF LOUISIANA

OPINION AND JUDGMENT

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 33072

TREIGLE SASH FACTORY, INC.,

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION

Appeal From the Civil District Court For the Parish of Orleans, Walter L. Gleason, Judge

This is one of the cases mentioned in the opinion rendered today in the case of Camille V. Treigle v. Acme Homestead Association, No. 33065. For the reasons given in that case, the judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and its suit dismissed at its cost.

Odom, J., dissents.

[fol. 41] IN SUPREME COURT OF LOUISIANA

No. 33072

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Treigle Sash Factory, Inc., plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article I of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

5. That this Court erred in holding that there is nothing [fol. 42] "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested right of property is protected by the Fourteenth Amendment to the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion

to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

II

Petitioner shows further that he will file in connection with this petition briefs in support thereof; and that for the reasons herein above set forth and to be amplified in [fol. 43] the briefs, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Alex. W. Swords, (Signed) A. Giffen Levy, (Signed) Hugh M. Wilkinson, Attorneys for Petitioner, Treigle Sash Factory, Inc. (Signed) Alex. W. Swords, (Signed) A. Giffen Levy, of Counsel.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fols. 44 & 45] IN SUPREME COURT OF LOUSIANA

No. 33072

[Title omitted]

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

[fol. 46] IN SUPREME COURT OF LOUISIANA

No. 33072

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES —Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana.

The petition of Treigle Sash Factory, Inc., respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 21, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner of $20,200.00 of the full paid capital stock of Conservative Homestead Association, a building and loan corporation, organized under the laws of the State of Louisiana, petitioner had in accordance with the charter and by-laws of said Association and the law of the State of Louisiana then in force, notified said Homestead Association of its intention to withdraw its said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Conservative Homestead Association and petitioner, obliging said Association to repay to petitioner his said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to its said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932, and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of its [fol. 47] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Conservative Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Conservative Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereunder, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Conservative Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisi-

ana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 48] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of it, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

(Signed) Alex W. Swords, (Signed) A. Giffen Levy,
Attorneys for Treigle Sash Factory, Inc., Petitioner and Proposed Appellant.

New Orleans, Louisiana, June 21, 1935.

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[fol. 49] IN SUPREME COURT OF LOUISIANA

No. 33072

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Treigle Sash Factory, Inc., plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 50] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawal of 50% of net receipts, and of which vested right of property said shareholder is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of Article I, Section 10, of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 51] ing Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and therefore unconstitutional.

For which errors, Treigle Sash Factory, Inc., prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause, be reversed, and judgment rendered in favor of the said Treigle Sash Factory, Inc.

Dated June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy,
Counsel for Treigle Sash Factory, Inc.

[fol. 52] IN SUPREME COURT OF LOUISIANA

No. 33072

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Treigle Sash Factory, Inc., for an appeal in the above suit to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Treigle Sash Factory, Inc., shall give good and sufficient security in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make his plea good it shall answer all costs.

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Camille V. Treigle, of New Orleans, Louisiana, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21, 1935.

(Signed) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

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[fols. 53-62] Bond on appeal for $1,000.00, approved and filed June 21, 1935, omitted in printing.

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[fol. 63] Citation in usual form, showing service on D. H. Theard, omitted in printing.

[fol. 64] IN SUPREME COURT OF LOUISIANA

No. 33072

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21, 1935.

(Signed) Alex W. Swords, (Signed) A. Giffen Levy, Counsel for Appellant. (Signed) Delvaille H. Theard, Counsel for Appellee.

---

[fol. 65] Clerk's certificate to foregoing transcript omitted in printing.

---

[fol. 66] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 26, 1935

Comes now Treigle Sash Factory, Inc., the appellant in the above entitled cause, and states that it adopts its assignment of error as its statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

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|---|---|
| 1. Plaintiff's petition and exhibit | 1 to 11 |
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| 3. Charter Article IV, second paragraph (p. 3) and By-laws Section IV, third paragraph (p. 14) and fourth paragraph through (2) of Conservative Homestead Association | 24-B |

| Title of paper. | Record pages. |
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| 5. District Court's decree | 35 |
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| 7. Application of Treigle Sash Factory, Inc. for rehearing | 41 to 43 |
| 8. Denial of application for rehearing April 1, 1935 | 44 |
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| 12. Order allowing appeal | 52 |
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| 18. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed. | |

Alex W. Swords, A. Giffen Levy, Counsel for Treigle Sash Factory, Inc., Appellant.

July 23, 1935.

Service acknowledged this July 23, 1935.

Delvaille H. Theard, Attorney for Defendant Conservative Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 67] [File endorsement omitted.]

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Endorsed on cover: File No. 39,843. Louisiana, Supreme Court. Term No. 289. Treigle Sash Factory, Inc., Appellant, vs. Conservative Homestead Association. Filed July 26, 1935. Term No. 289, O. T. 1935.

CLERK'S COPY.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1935.**

## No. 290

TREIGLE SASH FACTORY, INC., APPELLANT,

*vs.*

UNION HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 26, 1935.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1935

# No. 290

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TREIGLE SASH FACTORY, INC., APPELLANT,

*vs.*

UNION HOMESTEAD ASSOCIATION.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

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**IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

Division "B"—Docket # 5

No. 199,501

TREIGLE SASH FACTORY, INC.

versus

UNION HOMESTEAD ASSOCIATION

PETITION—SUIT FOR INJUNCTION—Filed October 21, 1932

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of the Treigle Sash Factory, Inc., a corporation organized under the laws of the State of Louisiana, and domiciled and doing business in the City of New Orleans, with respect represents:

I

That the Union Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for and governing the creation of homestead and building and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

II

That petitioner is the owner of 300 shares of the full-paid stock of the Union Homestead Association, of the face value of One Hundred Dollars ($100) each, represented by Certificate No. 6690, in the name of petitioner, which certifi- [fol. 2] cate was issued and delivered to your petitioner prior to its application to withdraw funds hereinafter referred to; that the aggregate of the par or face value of said certificate is the sum of Thirty Thousand Dollars ($30,000.00).

III

That said shares of stock are withdrawable shares, and were acquired by your petitioner subject to all of the rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the applicable provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of its investment in said Homestead Association and of the acquisition of its shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, an implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and fully as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of its investment, and acquisition of the full paid stock of said Association, as heretofore alleged, among the rights accorded to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of said Association; all of which said rights and obligations are embodied and contained in the provisions of Section 7 of Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in said Section and Act, and which are as follows, to-wit:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by

[fol. 3] giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

VI

Your peititioner avers that on the 19th day of May, in the year 1932, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by Certificate No. 6690, to-wit, the sum of Thirty Thousand Dollars ($30,000.00); and your petitioner annexes hereto and makes part hereof, as if set out in full herein, a copy of its said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the date of petitioner's notice of intention to withdraw its investments from said Association, and its said application being then unsatisfied, either in whole or in part, the rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section

and Act, became fixed and vested; that thenceforth it became the mandatory duty and obligation of said Association, its officers and directors, to set aside one-half of the receipts of said Association, and to apply said funds solely to the discharge and liquidation, in the order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, [fol. 4] and the term "receipts" interpreted to mean net receipts and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlendo versus Reliance Homestead Association.

VIII

That petitioner believes and, so believing, avers that after the date of its notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default — (60) days after the application for withdrawal, in whole or in part, on the part of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner itself, the said defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead Association has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, hereinafter more particularly referred to, and purporting to change said procedure.

X

That after your petitioner, by its application to withdraw under Section 7 of Act 280 of 1916, had established itself in its proper rank and place, according to the date

of its application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and had waited in vain from the time of its application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for payment of the Thirty Thousand Dollars ($30,000.00), represented by its certificate, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in homestead shares were endeavoring to have the said 1932 Legislature pass a new homestead law which would seriously alter the status of petitioner to its disadvantage, and would destroy its legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of its shares in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping [fol. 5] out the mandatory requirement of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular hereinafter detailed, depriving petitioner of legal rights acquired by him under the laws applicable to its investment; that petitioner not only did not acquiesce in said plan to change the law applicable to its investment, but appeared, through counsel, before the committees of the Legislature and urged the injustice and illegality of so depriving it of the rights it has acquired under the existing laws, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, generally, said Act 140 of 1932 supersedes Act 280 of 1916, and purports to permit new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these things retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the mandatory provisions of former laws, and particularly by

Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and violative of his constitutional rights:

(a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts towards the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of net receipts theretofore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and Act 280 of 1916.

[fol. 6] (b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpledged stock, inaugurates an innovation that is experimental and destructive of the principle of mutuality upon which said institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and of the disposition of a valuable asset of said Association in such a manner as can in on way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said associations to infringe upon the one-half of net receipts formerly required to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner and method of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of payment, and abolishes the system of payment in full in the order filed; creates a discriminatory provision for payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the payment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association.

(e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

## XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 [fol. 7] of 1932, deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5, Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and of Section 15 of Article IV of the Constitution of the State of Louisiana of 1921, and are therefore null and void insofar as they are sought to be made retrospective in their ap-

plicability to petitioner or its withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of ninety (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions of law affecting them, much in the same manner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of its rights now declared upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting it, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions of law retroactively upon itself, and does call upon this Honorable Court to take notice of its refusal to acquiesce and to, therefore, protect it in the maintenance of its rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law than by the process of injunction to restrain and prohibit said Association from applying and following unconstitutional permissive and obligatory provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in the manner and respects hereinbefore complained of and enumerated in detail [fol. 8] under Article XII of this petition, insofar as they may disturb the status and effect the statutory and contract rights of petitioner and the investment which petitioner had made in said Association; that unless said Association is enjoined from following the course of conduct either per-

mitted or made obligatory by said Sections of Act 140 of 1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Union Homestead Association, through its proper officers, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction herein, ordering the Union Homestead Association, through should not issue herein, restrain*able* and forbidding the Union Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of his investment in said Association, or in such a manner as to change, alter or impair the rights accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

Petitioner further prays that the Union Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment herein in favor of petitioner, Treigle Sash Factory, Inc., and against Union Homestead Association, said judgment decreeing that Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, insofar only as they may or do affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; said judgment further decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner, by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his investment of Thirty Thousand ($30,000.00) Dollars represented by certificate No. 6690 in said Homestead Association.

Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such fur-

ther and general relief as petitioner might be entitled to by [fol. 9] law, equity and the nature of the case.

By his attorneys, (Signed) Alex W. Swords, (Signed) Hugh M. Wilkinson. Alex. W. Swords, Trial Attorney.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

ORDER

Let a rule of "nisi" issue herein, and let the defendant, Union Homestead Association, through its proper officers, be and it is hereby ordered to show cause on the 31st day of October, 1932, at the hour of eleven o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

New Orleans, La., October 21, 1932.

(Signed) M. M. Boatner, Judge.

---

[fol. 10] EXHIBIT 1 TO PETITION

Copy

May 19, 1932.

Union Homestead Association, 351 Carondelet Street, New Orleans, Louisiana.

GENTLEMEN:

We are the owners of Certificate # 6690, representing 300 shares of stock in your Association.

We give this notice that we desire to withdraw the funds represented by said certificate from your Association.

We would thank you to acknowledge receipt hereof.

Very truly yours, Treigle Sash Factory, Inc., President.

CVT:AK.

[fol. 11] In Civil District Court for the Parish of Orleans

No. 199,501

[Title omitted]

Defendant's Exceptions—Filed May 16, 1933

Into court comes the defendant, Union Homestead Association, which excepts to the petition and demand of the plaintiff herein, on the ground that the same discloses no right of action and no cause of action.

Wherefore, exceptor prays that the said exceptions may be maintained, and that the present suit may be dismissed at the cost of the plaintiff.

And exceptor prays for all general and equitable relief, etc.

(Signed) Carroll, McCall, Plough & Carroll, Delvaille H. Theard, Attys.

Certificate

Devaille H. Theard, of counsel herein, does hereby certify that, in his opinion, the foregoing exceptions are well founded in law; that said exceptions have been filed in good faith, and not for delay.

New Orleans, May 16, 1933.

(Signed) Delvaille H. Theard.

---

[fol. 12] In Civil District Court for the Parish of Orleans

No. 199,501

[Title omitted]

Answer—Filed May 18, 1933

Now into Court, through undersigned counsel, comes the Union Homestead Association, made defendant herein, and for answer to plaintiff's petition, says:

1

Respondent denies the allegations of Article I of said petition, except as hereinafter admitted.

Respondent admits it is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled and doing business in the City of New Orleans.

2

Answering Article II, respondent, for lack of information to justify a belief, denies that plaintiff is the owner of three hundred shares of its full paid stock. Respondent admits that Certificate Number 6690, in the name of petitioner, was issued and delivered to petitioner prior to its application for withdrawal.

3

Answering Article III, respondent admits that said shares are withdrawable shares but shows that the other averments of Article III are conclusions of law, which respondent is not required to answer, but if any facts are pleaded in said Article, said facts are denied.

4

Answering Article IV, respondent shows that the averments of the said Article constitute conclusions of law, which respondent is not required to answer, but if any facts are pleaded in said Article, then respondent denies said facts.

5

Answering Article V, respondent admits that the shares [fol. 13] of stock alleged to be held by petitioner are withdrawable shares, but respondent shows that the other averments of the said Article are conclusions of law, which respondent is not required to answer, and if any facts are pleaded in said Article, said facts are denied.

6

Respondent admits the allegations of Article VI.

7

Answering Article VII, respondent shows that said Article contains mere conclusions of law, which respondent is not required to answer, but if any facts are pleaded in said Article, said facts are denied.

8

Respondent admits the allegations of Article VIII, but shows that all such applications for withdrawal by other members in said association had been applied for and made previous to petitioner's application and were paid by respondent association, when reached on the withdrawal list, in strict accordance with law. Respondent further shows that numerous applications for withdrawal antedating petitioner's application herein sued on were never reached on respondent's list, and remained unpaid.

9

Respondent denies the allegations of Article IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law.

10

Answering Article X, respondent denies the allegations of fact and conclusions of law stated in said Article, except as hereinafter admitted.

Respondent admits the enactment of Act 140 of 1932, by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

11

Answering Article XI, respondent shows that said Article contains only conclusions of law, which respondent is not required to answer, but if any facts are pleaded therein, they are denied.

12

Answering Article XII, respondent shows that said Article contains only conclusions of law, which respondent is not required to answer, but if facts are pleaded therein respondent denies them.

[fol. 14] 13

Answering Article XIII, respondent shows that said Article contains only conclusions of law, which respondent is not required to answer, but if facts are pleaded therein, respondent denies them.

14

Answering Article XIV, respondent denies the allegations of said Article, except the allegation that Act 140 of 1932 of the legislature of Louisiana became effective on July 27, 1932, which allegations respondent admits.

15

Answering Article XV, respondent shows that said Article contains only conclusions of law, which respondent is not required to answer, but if any facts are pleaded therein, respondent denies them.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions, organized and doing business not for profit but to enable wage-earners to own their homes; that said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control; that in Louisiana the quasi-public status of these associations is, and has for many years been, reflected in numerous provisions of the Legislature statutes and in many decisions of the Courts; that in bar of the claims of the petitioner herein, respondent pleads the provisions of Act Number 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

That, at the close of the year 1930 (it being the last available date), there were, in Louisiana, one hundred two (102) building and loan associations, with a membership of 200,930 and assets totalling $182,358,292.00; that in the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets of $128,964,939.00 and in membership of 225,545; that the building and loan associations in Louisiana, at the close of 1930, owned mortgage loans totaling $161,535,736.00, invested in homes and rep-

resenting, with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State; that the outstanding mortgage loans in building and loan associations in the United States for the year 1930 represented a total of $7,764,034,674.00; that the total number of depositors in savings banks in the United States for the year of [fol. 15] 1930 was 11,825,075,. and the total assets of said banks at the end of that year amounted to $9,190,969,000.00; and that in building and loan associations in the United States for that year, there were 12,350,928 members, and total assets of $8,828,611,925.00.

Respondent further shows that on or about July 27, 1932, it had 6,966 members, with total outstanding mortgage loans of $5,135,000.00, and total assets of $5,320,146.76, and a waiting list of 489 applicants, representing $351,033.30, upon which withdrawal list respondent had not been able to make any payments since the 21st day of February, 1932.

That since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. That in 1929 it became impossible, under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere. That Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would take care equitably of the applications of members in such associations, and, at the same time, protect and safeguard the interests of the public in said associations.

That under normal business conditions, building and loan associations in this State, and elsewhere, were operated without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence and without regard to the individual needs of the applicants or the amounts of their applications for withdrawal. That under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

That these conditions were fundamentally altered by the present depression. That as there was great unemploy-

ment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. That about seventeen months ago, conditions in this State reached the point where, owing to the great public distress and poverty, no one had any money which could be invested in building and loan associations, and all receipts from the investing public or wage-earners ceased absolutely. That this same [fol. 16] condition made it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. That at the same time, the normal collections from borrowers came almost to a standstill, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their homes. That the associations were compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be resold at a loss. That when the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

That the absence of funds from investors, the necessity of repaying bank loans out of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, make it necessary for the associations to postpone and delay the payment of withdrawal applications, almost indefinitely.

That in every association the shareholders nevertheless continued to present applications for withdrawals and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could expect to receive in cash the repayment and return of the monies invested by them in said associations; that this was especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawal would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

That there were also many shareholders who were particularly in great need of the cash repayment of their small

savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in some cases many years, before receiving the return of their investments.

That the new statute (Act No. 140 of 1932), through the medium of a new and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. That this new plan does not displace any application for withdrawal, but, for the general good, and in the interest of the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

[fol. 17] That the said statute was recommended to the Legislature by the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. That said State Banking Department for thirty years, as required by law, has been recommending basic changes in the organization, operation and management of building and loan associations; that many of these recommendations have been adopted by the Legislature, and enacted into law; that all of said recommendations and new legislative provisions have been complied with by the building and loan associations of this state; that, indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of building and loan associations, or the right of the Legislature, in its discretion, to regulate, or to suppress altogether, the business of building and loan associations.

That the system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholders may rush in and get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises and annexed affidavit considered, respondent prays that the demand of plaintiff be denied, and its suit dismissed at its cost; and

Respondent prays for all general and equitable relief in the premises.

(Signed) Carroll, McCall, Plough & Carroll, Attorneys for Defendant. Delvaille H. Theard, Legier, McEnerny & Waguespack, Weiss, Yarrut & Stich, Alfred D. Danziger and Percival H. Stern, J. G. Dempsey, D. J. Murphy, Hyman Mithoff, of Counsel.

[fols. 18-23] *Duly sworn to by Wm. Plaff. Jurat omitted in printing.*

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[fols. 24-27] In Civil District Court of Orleans Parish

Copy of Charter and By-Laws Offered in Evidence by Counsel for Defendant—Filed June 1, 1934

* * * * * * *

4. Members not indebted to the Association may withdraw all or any part of the cash value of their unpledged shares by giving notice in writing, and the liability to pay dues and the right to participation in profits shall cease with the notice. If the withdrawal be total, the member shall receive all installments paid, and all dividends credited thereto, less any unpaid charges and a pro rata share of the losses, if any, in excess of the amount in the contingent loss fund. Members making partial withdrawals shall forfeit all share in the earnings since the last dividend on the amount so withdrawn. Notices of withdrawal shall be registered and numbered in the order of their filing, and shall be liquidated in rotation as registered upon the return of the certificate of stock and pass book if the withdrawal be total, or on the giving of proper receipt if the withdrawal be partial, out of the first unappropriated money in the treasury; provided that not more than one-half of the monthly receipts shall ever be used for the liquidation of withdrawn or matured stock unless there should be an accumulation of funds that cannot be loaned in the ordinary course of business.

Full paid and matured shares may be withdrawn in the same manner as installment shares, but no fractional parts of shares can be withdrawn.

* * * * * * *

[fol. 28] In Civil District Court of Orleans Parish,
Division "D"

No. 199,497

Treigle Sash Factory, Inc.,

vs.

Conservative Homestead Assn.

Reasons for Judgment—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead Assoociation, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until

1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no [fol. 29] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable to the demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchasing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to with-

draw are filed. Whenever the proportion of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desiring to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stockholders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 30] doubt led most of the subscribers to make the investments in the respective homesteads, which during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act 140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a funda-

mental part of the form of government under which both the federal and state governments function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 31] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I [fol. 32] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, but because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication, one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two-fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corporations. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the State as to the manner and form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein

[fol. 33] homesteads can no longer borrow from banks with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in their brief an expression from Chief Justice O'Niell, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enactment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in mind, it will be judicially assumed that it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given case, the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applications up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also paying the withdrawing stockholders in the order of their applications for withdrawal, it provides that they shall be paid only twenty-five per centum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five per centum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 34] per centum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him under the Act of 1916 are paid out twenty-five per centum while his seventy-five per centum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the order of precedence as stipulated in the Act of 1916, and, through the exercise of this discretion, the board of directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice

of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is further subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present statute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future shareholders, one can certainly not, by a legisla- [fol. 35] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing members, except after provision was made for the setting aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception

that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 36] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the Constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

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[fols. 37-42] In Civil District Court of Orleans Parish

Division "D"

No. 199,501

Treigle Sash Factory, Inc.

vs.

Union Homestead Association

Judgment

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of the plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Treigle Sash Factory, Inc., and against defendant, Union Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further ordered, adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said defendant is restrained and enjoined from in any manner carrying into effect the provisions of Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $3,000.00.

Judgment rendered and read in open Court, May 16, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Signed) Walter L. Gleason, Judge.

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[fol. 43] IN SUPREME COURT OF LOUISIANA

OPINION AND JUDGMENT

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 33074

TREIGLE SASH FACTORY, INC.

vs.

UNION HOMESTEAD ASSOCIATION

Appeal from the Civil District Court, Parish of Orleans, Walter L. Gleason, Judge

This is one of the cases mentioned in the opinion rendered today in the case of Camille V. Treigle v. Acme Homestead Association, No. 33,065. For the reasons given

in that case, the judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and its suit dismissed at its cost.

Odom, J., dissents.

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[fol. 44] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Treigle Sash Factory, Inc., plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article I of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

5. That this Court erred in holding that there is nothing [fol. 45] "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested right of property is protected by the Fourteenth Amendment to the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

II

Petitioner shows further that he will file in connection with this petition briefs in support thereof; and that, for the reasons herein above set forth and to be amplified in [fol. 46] the briefs, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that

finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Alex. W. Swords, (Signed) A. Giffen Levy, (Signed) Hugh M. Wilkinson, Attorneys for Petitioner, Treigle Sash Factory, Inc. (Signed) Alex W. Swords, (Signed) A. Giffen Levy, of Counsel.

*Duly sworn to by C. V. Treigle. Jurat omitted in printing.*

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[fols. 46a & 47] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

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[fol. 48] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Treigle Sash Factory, Inc., respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 21, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner

of $30,000.00 of the full paid capital stock of Union Homestead Association, a building and loan corporation, organized under the laws of the State of Louisiana, petitioner had, in accordance with its charter and by-laws of said Association and the law of the State of Louisiana then in force, notified said Homestead Association of its intention to withdraw its said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Union Homestead Association and petitioner, obliging said Association to repay to petitioner its said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to his said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932, and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of its [fol. 49] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Union Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Union Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereundor, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Union Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisiana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 50] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of him, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy, Attorneys for Treigle Sash Factory, Inc., Petitioner and Proposed Appellant.

[fol. 51] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Treigle Sash Factory, Inc., plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legistive Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legislative Acts of the State of Louisiana, approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 52] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, and of which vested right of property said shareholder is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of Article I, Section 10, of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 53] ing Sections 53, 54, 55 and 56 of Act No. 140 of

1932 of Louisiana, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and therefore, unconstitutional.

For which errors, Treigle Sash Factory, Inc., prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause, be reversed, and judgment rendered in favor of the said Treigle Sash Factory, Inc.

Dated June 21, 1935.

(Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy,
Counsel for Treigle Sash Factory, Inc.

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[fol. 54] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Treigle Sash Factory, Inc., for an appeal in the above suit to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Treigle Sash Factory, Inc., shall give good and sufficient security in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make its plea good it shall answer all costs.

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Camille V. Treigle, of New Orleans, Louisiana, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21, 1935.

(Sgd.) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

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[fols. 55-64] Bond on appeal for $1,000.00, approved and filed June 21, 1935, omitted in printing.

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[fol. 65] Citation in usual form, showing service on D. H. Theard, omitted in printing.

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[fol. 66] IN SUPREME COURT OF LOUISIANA

No. 33074

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Alex. W. Swords, (Sgd.) A. Giffen Levy, Counsel for Appellant. (Sgd.) Delvaille H. Theard, Counsel for Appellee.

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[fol. 67] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 26, 1935

Comes now Treigle Sash Factory, Inc., the appellant in the above entitled cause, and states that it adopts its assignment of error as its statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

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| 4. Reasons of District Judge | 28 to 36 |
| 5. District Court's decree | 37 |
| 6. Opinion and decree of Supreme Court of Louisiana | 43 |
| 7. Application of Treigle Sash Factory, Inc. for rehearing | 44 to 46 |
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| 9. Petition for appeal to this Court | 48 to 50 |
| 10. Assignment of errors | 51 to 53 |
| 11. Statement of Basis of Jurisdiction | 57 to 63 |
| 12. Order allowing appeal | 54 |
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| 14. Citation of appeal and return | 65 |
| 15. Agreement on Transcript | 66 |
| 16. Proof of service required by Rule 12, paragraph 2 | 64 |
| 17. Certificate of Clerk Supreme Court of Louisiana | 67 |
| 18. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed. | |

July 23, 1935.

Alex. W. Swords, A. Giffen Levy, Counsel for Treigle Sash Factory, Inc. ,Appellant.

**Service acknowledged this July 23, 1935.**

Delvaille H. Theard, Attorney for Defendant Union Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 69] [File endorsement omitted.]

Endorsed on cover: File No. 39,844. Louisiana, Supreme Court. Term No. 290. Treigle Sash Factory, Inc., Appellant, vs. Union Homestead Association. Filed July 26, 1935. Term No. 290, O. T. 1935.

CLERK'S COPY.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1935**

## No. 316

JOSEPH MITCHELL, APPELLANT,

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

**FILED JULY 31, 1935.**

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

# No. 316

JOSEPH MITCHELL, APPELLANT,

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

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**IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

Division "B"—Docket 5

Transferred to Division "D"

No. 199,578

JOSEPH MITCHELL

versus

CONSERVATIVE HOMESTEAD ASSOCIATION

PETITION FOR INJUNCTION—Filed October 25, 1932

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of Joseph Mitchell, of lawful age and a resident of this City, with respect, represents:

I

That the Conservative Homestead Association is a corporation organized under the laws of the State of Louisiana, providing for governing the creation of homestead and building, and loan associations, and particularly under the general enabling and regulatory provisions of Act 120 of 1902, and laws amendatory thereof; that said Association is domiciled and doing business in the City of New Orleans.

[fol. 2]

II

That petitioner is the owner of 100 shares of the full-paid stock of the Conservative Homestead Association of the face value of One Hundred ($100.00) Dollars each, represented by certificate No. 21353, which certificate was issued and delivered to your petitioner prior to its application to withdraw funds hereinafter referred to; that the par or face value of said certificate is the sum of Ten Thousaid ($10,000.00) Dollars.

III

That said shares of stock are withdrawable shares, and were acquired by your petitioner subject to all of the rights provided by the charter and by-laws of said Homestead Association and of the statutes under which said Association was created and by which it was governed, and particularly by the applicable provisions of Act 120 of 1902, as amended by Act 280 of 1916.

IV

Your petitioner further represents that at the time of its investment in said Homestead Association and of the acquisition of its shares of full paid stock, as heretofore alleged, the reciprocal rights and liabilities between full paid shareholders and other shareholders, and between full paid shareholders and said Association, were regulated and controlled by the charter and by-laws of said Association and the statute law, especially Acts 120 of 1902 and 280 of 1916, then in force; that said provisions became, by force of law, and implied condition and provision in petitioner's contractual relationship with said Homestead Association as a consequence of petitioner's investment by the acquisition of said shares, as completely and full as though written in detail in the certificates of shares themselves.

V

Your petitioner further represents that at the time of its investment, and acquisition of the full paid stock of said Association, as heretofore alleged, among the rights accorded to full paid shareholders by the charter and statutory provisions was that of withdrawing from said Association the investment made therein, at will, upon complying with the formal requisite of filing with said Association a written notice of intention to withdraw, whereupon there enured to the applicant for withdrawal certain statutory rights which became mandatory obligations upon the part of said Association; all of which said rights and obligations are [fol. 3] embodied and contained in the provisions of Section 7 of Act 280 of 1916, and which said rights and obligations petitioner avers are precisely as set forth in said Section and Act, and which are as follows, to-wit:

Section 7. "Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by

giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

VI

Your petitioner avers that on the 30th day of May, 1931, your petitioner applied to the defendant Homestead, under the terms of Section 7 of Act 280 of 1916, and in writing, to withdraw the amount of money thus invested in said Homestead, and represented by certificate No. 21353, to-wit, the sum of Ten Thousand ($10,000.00) Dollars, and your petitioner annexes hereto and makes part hereof, as if set out in full herein, a copy of its said written notification of desire to withdraw said funds, marking same for identification Plaintiff—1.

VII

That under the said provisions of said Section 7 of Act 280 of 1916, with the elapse of sixty (60) days from the date of petitioner's notice of intention to withdraw its in- [fol. 4] vestments from said Association, and its said application being then unsatisfied, either in whole or in part, the rights imparted to petitioner and the obligations imposed upon said Association, with respect to petitioner's withdrawal application, by the provisions of said Section and Act, became fixed and vested; that thenceforth it be-

came the mandatory duty and obligation of said Association its officers and directors, to set aside one-half of the receipts of said Association and to apply said funds solely to the discharge and liquidation, in the order filed, of petitioner's application and similar applications for withdrawal; that the validity of this procedure was affirmed, and the term "receipts" interpreted to mean net receipts, and homestead associations held subject to mandatory process to enforce this procedure, by the Louisiana Supreme Court in the case of Orlando versus Reliance Homestead Association.

VIII

That petitioner believes and, so believing, avers that after the date of its notification of intention to withdraw from said Association, many similar applications for withdrawal by other members in said Association were so paid and discharged in full, but to the date of the filing of this petition your petitioner has received nothing on account thereof.

IX

Your petitioner further avers that, either by reason of a default sixty (60) days after the application for withdrawal, in whole or in part, on the part of some other investor, or because of the default in whole after sixty (60) days from notice of intention to withdraw by petitioner itself, the said defendant Homestead Association became obligated under the terms of said statute to apportion fifty (50%) per cent of its net receipts regularly to the payment of said applications for withdrawal, in their proper sequence, and that said Homestead Association has observed said procedure under said Act 280 of 1916 regularly, although never reaching payment of the withdrawal application of your petitioner, and has continued to follow said procedure up to the effective date of Act 140 of 1932, hereinafter more particularly referred to, and purporting to change procedure.

X

That after your petitioner, by his application to withdraw under Section 7 of Act 280 of 1916, had established itself in its proper rank and place, according to the date

of its application, on the list of the defendant Homestead's shareowners applying for withdrawal of their money, and [fol. 5] had waited in vain from the time of its application for withdrawal until the meeting of the 1932 General Assembly of Louisiana for payment of the Ten Thousand ($10,000.00) Dollars, represented by its certificate, it came to the attention of petitioner that proponents of a new and different system of withdrawing funds invested in Homestead shares were endeavoring to have the said 1932 Legislature pass a new homestead law which would seriously alter the status of petitioner to its disadvantage, and would destroy its legal rights, acquired under Section 7 of Act 280 of 1916, to be paid the proceeds of its shares in the defendant Homestead, in the rank and manner provided by said Section 7, as well as disrupting and wiping out the mandatory requirements of apportionment of fifty (50%) per cent of the net revenues of said Homestead to such payments; and, in every other particular hereinafter detailed, depriving petitioner of legal rights acquired by it under the laws applicable to its investment; that petitioner did not acquiesce in said plan to change the law applicable to its investment, but that the said Legislature of 1932 nevertheless enacted what is known as the General Homestead Law of 1932, being Act 140 of that year.

XI

That, generally, said Act of 140 of 1932 supersedes Act 280 of 1916, and purports to permit new innovations and experimentations radically differing from the statutory provisions of said latter acts, and which are inconsistent with, and utterly destructive of, the fundamental and established principles inherent in the nature of building and loan institutions; that it destroys and materially changes substantive rights, and impairs or abolishes obligations theretofore created, and subsisting, in favor of withdrawing shareholders of said institutions; and purports to do these things retrospectively and in a manner applicable and prejudicial to the statutory rights accorded by the mandatory provisions of former laws, and particularly by Act 280 of 1916; all of which is done or attempted without legal or constitutional justification and in a manner that is unreasonable and arbitrary.

XII

That, more specifically, petitioner herewith enumerates and details the parts of said Act 140 of 1932 wherein said changes and innovations are attempted and of the manner and respects wherein they are prejudicial to petitioner and violative of its constitutional rights:

[fol. 6] (a) That Section 56 of said Act purports to supersede and abolish the requirements made mandatory on the part of said Association by former laws, to set aside and allocate one-half of the net receipts towards the liquidation of petitioner's withdrawal application, and to substitute therefor, and in lieu thereof, the discretion of the Board of Directors; that said section permits of the making of new loans, and of the payment of dividends, from the proportion of net receipts theretofore reserved to applicants for withdrawal under the provisions of Act 120 of 1902 and Act 280 of 1916.

(b) That Section 57 of said Act, in permitting of the sale of repossessed property of said Association, in exchange for shares of unpledged stock, inaugurates an innovation that is experimental and destructive of the principle of mutuality upon which such institutions are founded, and upon the basis of which they have always existed in Louisiana; that such a provision permits of a preference in the retirement of stock of shareholders not on the withdrawal list, and of the disposition of a valuable asset of said Association in such a manner as can in no way enure to the benefit of withdrawing shareholders—contrary to the provisions of Act 280 of 1916, and highly prejudicial to the rights and obligations thereby accorded to petitioner as a withdrawing shareholder.

(c) That Section 53 of said Act permits said associations to infringe upon the one-half of net receipts formerly required to be allocated to withdrawing shareholders, as heretofore alleged, by allowing for the creation of cash reserves to pay dividends to continuing members.

(d) That Section 54 of said Act creates a new experimentation in the manner and method of payment of withdrawals, reduces the amount payable, upon maturity of the application, from one hundred (100%) per cent to twenty-five (25%) per cent; provides a stagger system of pay-

ment, and abolishes the system of payment in full in order filed; creates a discriminatory provision for payment in full in the order filed; creates a discriminatory provision for the payment in full of shareholders owning Five Hundred ($500.00) Dollars or less; accords to the directors an optional discretion to further discriminate in the payment of applications of One Hundred ($100.00) Dollars or less; and completely destroys the absolute mutuality heretofore existing between installment shareholders and full paid shareholders, by according to the former a preference; all of which is done and permitted retrospectively, and by said Act made obligatory upon said Association.

[fol. 7] (e) That Section 55 of said Act attempts to deprive withdrawing shareholders of free access to the courts to enforce their rights and protect their investments; denies to them a cause of action except under the provisions of Act 140 of 1932, and abolishes the right of access to the books and records of such associations for any other purpose.

All of which said innovations, experimentations and changes are material and substantive, and highly prejudicial to the vested contract rights heretofore accorded to petitioner by law, and especially by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

XIII

That, therefore, Sections 53, 54, 55, 56 and 57 of Act 140 of 1932 deprive your petitioner of "equal protection" and of "due process of law"; that they are arbitrary and unreasonable in their application to petitioner, divest petitioner of vested rights, and "impair" the obligation of petitioner's contract with said Association, as heretofore alleged; that said sections are therefore violative of Amendment 5 and Section 1 of Amendment 14, and Section 10 of Article I of the Constitution of the United States, and Section 15 of Article IV of the Constitution of the State of Louisiana of 1921, and are therefore null and void insofar as they are sought to be made retrospective in their applicability to petitioner or its withdrawal application in said Association.

XIV

That the framers of said Act 140 of 1932, doubtless having in mind the confiscatory character, injustice, illegality and unconstitutionality of the before complained of provisions of said Statute, in its attempted retroactive operation upon the withdrawing shareholders whose rank had become established under the previous law, have provided by Section 76 of said Act 140 of 1932 a plan of validation of said Statute by acquiescence, in that the said Section 76 permits of a period of ninety (90) days from the effective date of the Statute within which the shareholders may, by their silence and inaction, acquiesce in these new provisions of law affecting them, much in the same manner as new shareholders coming into the Association would tacitly accept provisions of the then existing laws; but that your petitioner, who has diligently and vigorously opposed this attempted destruction of its rights now declared upon, declines acquiescence in the changed provisions of the Act of 1932, as affecting it, and does now, within the ninety (90) day period, repudiate and protest against the application of said changed provisions [fol. 8] of law retroactively upon itself, and does call upon this Honorable Court to take notice of its refusal to acquiesce and to, therefore, protect it in the maintenance of its rank and rights as a withdrawing shareholder from the defendant Homestead under Section 7 of Act 280 of 1916; that said Act 140 of 1932 became effective on July 27th, 1932.

XV

That petitioner has no adequate remedy at law than by the process of injunction to restrain and prohibit said Association from applying and following the unconstitutional permissive and obligatory provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in the manner and respects hereinbefore complained of and enumerated in detail under Article XII of this petition, insofar as they may disturb the status and affect the statutory and contract rights of petitioner and the investment which petitioner has made in said Association; that unless said Association is enjoined from following the course of conduct either permitted or made obligatory by said Sections of Act 140 of

1932 to the extent that they destroy and adversely impair the vested rights which petitioner has acquired as a withdrawing shareholder, petitioner will suffer irreparable injury.

Wherefore, petitioner prays that a rule "nisi" issue herein, ordering the Conservative Homestead Association, through its proper officers, to show cause, on a day and hour to be fixed by this Honorable Court, why a preliminary injunction should not issue herein, restraining and forbidding the Conservative Homestead Association, its officers, agents and employees, from following the course of conduct made permissive or obligatory by the provisions of Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, in such a manner as to disturb the status of petitioner's withdrawal application of its investment in said Association, or in such a manner as to change, alter or impair the rights accorded to petitioner as a withdrawing shareholder by the provisions of Act 120 of 1902, as amended by Act 280 of 1916.

Petitioner further prays that the Conservative Homestead Association, through its proper officers, be duly cited to appear and answer this petition and, after legal delays and due proceedings had, there be judgment herein in favor of petitioner, Joseph Mitchell, and against Conservative Homestead Association, said judgment decreeing that Sections 53, 54, 55, 56 and 57 of Act 140 of 1932, insofar only [fol. 9] as they may or do affect petitioner or petitioner's investment and the rights acquired by petitioner as a withdrawing shareholder under the provisions of Act 120 of 1902, as amended by Act 280 of 1916, are unconstitutional, null and void; said judgment further decreeing that petitioner is entitled to enforce the provisions of Section 7 of Act 280 of 1916, and to have and enforce all and every right accorded to petitioner, by said Section and Act, or by any other provision of Act 120 of 1902, as amended by Act 280 of 1916; said judgment further perpetuating the temporary injunction herein sued out, until petitioner has received in full his investment of Ten Thousand ($10,000.00) Dollars, represented by certificate No. 21353 in said Homestead Association. Petitioner further prays for all orders deemed necessary or proper, for all costs of this proceeding, and for such further and general relief as petitioner

might be entitled to by law, equity and the nature of the case.

(Signed) Arthur B. Leopold, Attorney for Petitioner.

*Duly sworn to by Arthur B. Leopold. Jurat omitted in printing.*

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ORDER

Let a rule "nisi" issue herein, and let the defendant, Conservative Homestead Association, through its proper officers, —— October, 1932, at the hour of 10:30 o'clock A. M., why a preliminary injunction should not issue in this cause, as prayed for and according to law.

[fol. 10] New Orleans, La., October 25, 1932.

(Signed) M. M. Boatner, Judge.

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[fol. 11] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

[Title omitted]

ANSWER—Filed January 4, 1933

Into Court comes the Conservative Homestead Association, defendant herein, and, for answer to the petition of Joseph Mitchell, says:

I

Respondent denies the averments of Paragraph I, except as hereinafter admitted.

Respondent is a building and loan association, organized and operated under the laws of the State of Louisiana, particularly Act 140 of the Legislature of 1932, and is domiciled and doing business in the City of New Orleans.

II

Respondent admits the allegations of Paragraph II.

III

Answering Paragraph III, respondent admits that said shares are withdrawable shares.

Respondent shows that the other averments of Paragraph III are conclusions of law, which respondent is not required to answer. In the alternative, if any facts are involved in said paragraph said facts are denied.

IV

Answering Paragraph IV, respondent shows that the averments of the said paragraph constitute conclusions of law, which respondent is not required to answer; and, if any facts are involved in said paragraph, then respondent denies said facts.

V

Answering Paragraph V, respondent admits that the shares of petitioner are withdrawable shares; and respondent shows that the other averments of the said paragraph are conclusions of law, which respondent is not required to answer. If any are embodied in said paragraph, the said facts are denied.

[fol. 12]

VI

Respondent admits the averments of Paragraph VI.

VII

Answering Paragraph VII, respondent shows that said paragraph contains mere conclusions of law, which respondent is not required to answer; and if any averments of fact are contained in said paragraph, the said averments are denied.

VIII

Respondent admits the averments of Paragraph VIII, but shows that all such applications for withdrawal by other members in said Association had been applied for and made previous to the application of the withdrawal of the petitioner herein, and were paid by respondent association, when reached on the withdrawal list, in strict accordance with law; and respondent further shows that numerous applications for withdrawal antedating petitioner's application herein sued on were never reached on respondent's list, and remain unpaid.

IX

Respondent denies the averments of Paragraph IX, except as hereinafter admitted, and respondent shows that it has always, and is now, complying with the law.

X

Answering Paragraph X, respondent denies the averments of fact and conclusions of law stated in said paragraph, except as hereinafter admitted.

Respondent admits the enactment of Act 140 of 1932 by the Legislature of Louisiana of that year, and the appearance of petitioner, through counsel, to voice opposition to said legislation at the time of the enactment thereof.

XI

Answering Paragraph XI, respondent shows that the said paragraph contains only conclusions of law, which respondent is not required to answer. If any statements of fact are contained in said paragraph, the same are denied.

XII

Paragraph XII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

[fol. 13]

XIII

Paragraph XIII contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

XIV

Respondent admits that Act 140 of 1932 of the Legislature of Louisiana became effective on July 27, 1932.

Respondent denies the other averments of law and of fact contained in Paragraph XIV of plaintiff's petition.

XV

Paragraph XV contains conclusions of law, which respondent is not required to answer. If said paragraph contains any averments of fact, the said facts are denied.

Further answering, respondent shows that building and loan associations in Louisiana are quasi-public institutions,

organized and doing business not for profit, but to enable wage-earners to own their homes. Said Associations, not only in Louisiana, but in practically every other State, as also in England, have always been recognized as being subject to public supervision, regulation and control. In Louisiana, the status of these associations is, and has for many years been, reflected in numerous provisions of the legislative statutes and in many decisions of the courts. In bar of the claims of the petitioner herein, respondent pleads the provisions of Act No. 140 of 1932 of the Legislature of Louisiana, and particularly the provisions of Section 80 of said Act.

In Louisiana, at the close of the year 1930 (last available date), there were one hundred two (102) building and loan associations, with a membership of 200,930 and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928 and total assets of $8,828,611,925.00, an increase over the previous year in assets of $128,964,939.00 and in membership of 225,545. The building and loan associations in Louisiana, at the close of 1930, owned mortgage loans totalling $161,525,736.00, invested in homes and representing, with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State. The outstanding mortgage loans in building and loan associations in the United States, for the year 1930, represented a total of $7,764,034,674.00. The total number of depositors — savings banks in the United States for the year 1930 was 11,895,075, and the total assets of said banks at the end of that year, [fol. 14] amounted to $9,190,969,000.00. In building and loan associations in the United States for that year, there were 12,350,928 members, and the total assets of the said building and loan associations in that year were $8,828,611,925.00.

Your respondent shows that, on or about July 27, 1932, it had 6,742 members, with total outstanding mortgage loans of $4,720,200.00, and total assets of $6,513,684.81, and a waiting list of 1,078 applicants, representing $711,632.71, upon which withdrawal list respondent had not been able to make any payments since the 22nd day of April, 1931, and that respondent has not been able since that time to make any payments upon its said withdrawal list.

Since the date of the organization of the first building and loan association in Louisiana, under normal conditions of business, the said associations have been able to meet applications for withdrawals practically on demand. In 1929 it became impossible under the conditions of depression in the business world then prevailing, for many building and loan associations to meet on demand applications for withdrawal, and withdrawal lists were instituted in numerous building and loan associations in this State, and elsewhere. Act 140 of 1932 was enacted by the Legislature of Louisiana to provide a method of withdrawal which would equitably take care of the applications of members in such associations, and, at the same time, protect and safeguard the interests of the public in said associations.

Under normal business conditions, building and loan associations in this State, and elsewhere, were operated without difficulty under a withdrawal plan by which shareholders desiring to withdraw were paid off in sequence and without regard to the individual needs of the applicants or the amounts of their applications for withdrawal. Under normal conditions, these associations received daily substantial deposits and collections, making it easy for them to meet on demand the applications of their withdrawing shareholders.

But these conditions were fundamentally altered by the present depression. As there was great unemployment and a tremendous need for cash for living expenses in millions of households in this country, there was a great decrease in the amount of funds available for investment in building and loan associations. In this State, about twelve months ago, conditions reached the point where, [fol. 15] owing to the great public distress and poverty, no one had money which could be invested in building and loan associations, and all receipts from the investing public or wage-earners ceased absolutely. This same condition made it necessary for those who were already shareholders in such associations to apply for the withdrawal of their investments. At the same time, the normal collections from borrowers came almost to a standstill, as, owing to the unemployment, many of the members found it impossible to keep up the payments on their homes. The associations were compelled to repossess many of said homes, which, because of the lessened buying power of the public, and the lack of money and credit generally, could only be re-

sold at a loss. When the associations retained their repossessed properties, they became subject to heavy and burdensome expenses for taxes, paving and repairs in respect of said properties.

The absence of funds from investors, the necessity of repaying bank loans out of current receipts, the extraordinary expenses incident to the administration of large blocks of repossessed properties, made it necessary for the association to postpone and delay the payment of withdrawal applications, almost indefinitely.

In every association, the shareholders nevertheless continued to present applications for withdrawals; and it became evident, if the associations were to continue under the plan then existing for the payment of withdrawals, that, for a long period of time, only a few shareholders could expect to receive in cash the repayment and return of the monies invested by them in said associations; this being especially true because, in many cases, at or near the top of the withdrawal lists, were many large investors whose applications for withdrawal would have to be paid first, before any payments whatever could be made to other shareholders not so favorably placed on the withdrawal list.

There were also many shareholders who were particularly in great need of the cash repayment of their small savings; and, because of the clogged conditions of the withdrawal lists, it was likely, in many instances, that these small investors would have to wait many months, and in several cases many years, before receiving the return of their investments.

The new statute (Act No. 140 of 1932), through the medium of a new and improved plan for the payment of withdrawals, meets the varying conditions above set forth, by a reasonable and proper and legal exercise of the police power. This new plan does not displace any application for withdrawal, but, for the general good, and in the interest of [fol. 16] the public welfare, without partiality or inequality, provides for the distribution, on a more equitable basis, of any funds available for the payment of withdrawal in any building and loan association.

The said statute was recommended to the Legislature by the State Banking Commissioner and Supervisor of Building and Loan Associations in this State. The State Banking Department for thirty years, as required by law, has

been recommending basic changes in the organization, operation and management of building and loan associations. Many of these recommendations have been adopted by the Legislature, and enacted into law. All of said recommendations and new legislative provisions have been complied with by the building and loan associations of this State. Indeed, until the filing of the present suit, no one in Louisiana has ever questioned either the interest of the public in the safe and proper management of building and loan associations, or the right of the Legislature, in its discretion, to regulate, or to suppress altogether, the business of building and loan associations.

The system of withdrawal is no longer a race of diligence between stockholders where the rich and, as a rule, better informed, though less needy, stockholder may rush in and get paid to the prejudice of his poorer, more needy and less informed brother.

Wherefore, the premises considered, respondent prays that the demand of the plaintiff may be denied, and that plaintiff's suit may be dismissed, with costs.

And for all general and equitable relief.

(Signed) Weiss, Yarrut & Stich, Attorneys for Defendant. (Signed) Delvaille H. Theard, Legier, McEnerny & Waguespack, Carroll, McCall & Plough, A. D. Danziger and P. H. Stern, J. G. Dempsey, D. J. Murphy, M. Mithoff, J. Zach Spearing, Scott E. Beer, of Counsel.

[fol. 17] *Duly sworn to by Allen H. Generes. Jurat omitted in printing.*

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[fols. 18-24] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

No. 199,578

[Title omitted]

DEFENDANT'S EXCEPTIONS—Filed May 16, 1933

Into Court comes the defendant, Conservative Homestead Association, which excepts to the petition and demand of the plaintiff herein, on the ground that the same discloses no right of action and no cause of action.

Wherefore, exceptor prays that the said exceptions may be maintained, and that the present suit may be dismissed at the cost of the plaintiff.

And exceptor prays for all general and equitable relief, etc.

(Signed) Delvaille H. Theard, (Signed) Weiss, Yarrut & Stich, Attorneys.

Certificate

Delvaille H. Theard, of counsel herein, does hereby certify that, in his opinion, the foregoing exceptions are well founded in law; that said exceptions have been filed in good faith, and not for delay.

New Orleans, May 16, 1933.

(Signed) Delvaille H. Theard.

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[fol. 25] In Civil District Court of Orleans Parish, Division "D"

No. 199,497

Treigle Sash Factory, Inc.

vs.

Conservative Homestead Assn.

Reasons for Judgment—Filed May 16, 1934.

In these cases, there were originally seven suits filed, one of which, the suit of Mrs. Poulit v. Fidelity Homestead Association, No. 199,522, has been discontinued. The balance of the cases are exactly alike and involve the same issues, with the exception of Sokolsky v. Equitable Homestead, No. 199,559, which differs slightly in the relief sought, but which is nevertheless identical in the constitutional issues involved.

All of the plaintiffs in writ of injunction attack Sections 53 to 57, inclusive, of Act 140 of 1932 on the ground that they deny them the equal protection of the laws and impair the obligations of contracts, in violation of the provisions of the Constitution of the United States and of this State.

They claim contractual rights by virtue of their subscription to stock in the respective homesteads and by virtue

of the rights of withdrawal granted them at the time of their subscriptions to paid-up stock, under the provisions of Section 7 of Act 280 of 1916, and claim that these contractual rights were impaired by the aforesaid sections of the Act 140 of 1932.

The defendants, on the other hand, contend that no contractual rights were vested by virtue of Section 7 of Act 280 of 1916, but that whatever rights were granted were purely statutory and were subject to the reserved right of the legislature to change these rights as it saw fit under an exercise of the police power of the State.

It is, therefore, necessary to inquire first whether any rights accrued to the plaintiffs by virtue of their paid-up subscriptions to the stock of the respective homestead associations under Section 7 of Act 280 of 1916.

In a consideration thereof, it must be borne in mind that building and loan associations have been the subject of legislation over a long period of time, but it was not until 1902 that the legislature saw fit to provide the measure of allotment or the restrictions upon allotment with regard to paid-up shares. Thus Section 7 of Act 120 of 1902 provided:

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no [fol. 26] time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors."

It will be observed, therefore, that this section fixed a limitation upon the amount applicable to the demands of withdrawing members, but imposed no obligation whatever to allot any particular amount, leaving the question of amount of allotment entirely in the discretion of the board of directors.

As financial conditions improved and the use of homesteads by subscribing members for the purpose of purchas-

ing and building homes became more pronounced, it was thought advisable by the legislature to amend Section 7 of the Act of 1902 so as to hold out additional inducements to those subscribing to paid-up stock, and, in accordance therewith, Section 7 was amended so as to read as follows, to-wit:

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw are filed. Whenever the proportion of receipts ordinarily made applicable to the demand of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

It is obvious, therefore, that the Act of 1916 made a substantial change in the rights of paid-up stockholders desiring to withdraw, because, whereas, under the provisions of the Act of 1902, the matter was left to the discretion of the Board of Directors, with a limitation upon the amount which they may apply to such demands, the Act of 1916 continued the discretion in the board of directors, but also provided that, if the amount applied by them to the withdrawing members was not sufficient to pay them in whole within sixty days, thereafter one-half of its receipts should be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

It is this right to a segregation of one-half of the receipts which the plaintiffs in these cases claim are contractual rights which the superseding Act of 1932 impairs.

There is no force whatever in the contention of defendants that there has been no change between the provisions of the Act of 1902 and the Act of 1916, because, as hereinabove pointed out, the right to the segregation of the funds is not only a substantial change, but is one which held out an early liquidation of the claims of the withdrawing stockholders by the aforesaid segregation of a proportion of the receipts, and it is this inducement or guarantee which no [fol. 27] doubt led most of the subscribers to make the investments in the respective homesteads, which during the boom period were so prolific.

The defendants, however, claim that this right accruing under the Act of 1916 was not a contractual right, but that it was what they term a statutory right, resulting from the provisions of the Act of 1916, which they contend contained a reserved right to amend by the legislature, and that the provisions of the Act of 1916 were merely a legislative grant, subject to change at the whim of the legislature.

In support of these respective contentions, I have been furnished with very able argument on behalf of extremely competent attorneys for both the plaintiffs and defendants, together with elaborate briefs on both sides. These briefs have been supplemented by counsel in furnishing me with the decisions in the cases of Home Building & Loan Assn. v. Blasdell, decided January 8, 1934, Advance Sheets Supreme Court Reporter, Vol. 54, page 5 (commonly referred to as the "Moratorium Case"); Leo Nebbia, appellant, v. People of the State of New York, decided March 5, 1934, by the Supreme Court of the United States (commonly referred to as the "Milk Case"); In the Matter of the Application of the People of the State of New York, by George S. Van Schaick, Superintendent of Insurance of the State of New York, for an Order to Take Possession of the Property of and Rehabilitate the Title & Mortgage Guaranty Company of Buffalo, decided March 21, 1934, by the Court of Appeal for the State of New York; and also a decision of the Supreme Court of this State in the matter of Harding v. Blanchard, No. 32,763 of the docket of said Court, decided March 26, 1934.

The only bearing that the latter case has on the instant case is that it was therein decided that Section 57 of Act 140 of 1932, which permitted the defendant corporations to accept their own stock, as part of the purchase price in disposing of repossessed property, was not a violation of any

contractual or statutory rights accruing to paid-up stockholders, but was merely administrative in its character and did not trench upon the reserve fixed by the Act of 1916. That, of course, disposes of any contention in these cases involving Section 57. The remaining cases above cited will be discussed later.

The contention of defendants that the paid-up stockholders acquired no rights under the Act of 1916 is, in my judgment, absolutely without merit.

There are two schools of thought in the application of the contract clauses in the federal and state constitutions, one of which may be designated as the "liberal" school and the other as the "conservative" school.

Presently the United States Supreme Court is divided five to four, with the liberal school prevailing. There is, however, no difference in opinion whatever between the respective schools in their firm conviction that the contract clauses of the federal and state constitutions form a fundamental part of the form of government under which both the federal and state governments function.

There is a firm conviction on the part of each school that any surrender of the rights accruing under the provisions of these guarantees would amount to a change in the form of government, and they, therefore, are in common agreement in the belief that these guarantees are fundamental [fol. 28] and immutable. The difference in opinion between these respective schools is always in the application of these guarantees, and, as said before, not as to their fundamental guarantees.

That is the reason why, in every one of the cases decided by the Supreme Court of the United States, and very largely by the decisions rendered by the respective state courts, the language used by the prevailing opinions is extremely guarded in its expression. An attempt is always made, as far as humanly possible, to confine the language of the case in its application to that particular case, and there is always a discussion of the previous cases, either as direct authority for the views held in the particular case at issue, or in order to differentiate the case at issue from previous decisions.

In short, what we term the "liberal" school of thought is merely more liberal in allowing a broader legislative authority to meet the changed conditions in political, social

and economic conditions so as to promote the morals, health or general welfare of the people; whereas, the "conservative" school are a little more timorous in their allowances. However, the liberal school is always so guarded in its language, wherein it affirms what some believe to be legislative encroachments, that the difference between the two schools of thought is tenuous indeed.

That contractual rights flow to the subscribers under Section 7 of Act 280 of 1916, in my judgment does not admit of debate, because, where a person deals with a corporation which is subject to legislative control, he deals with it on the basis of the legislation then existing. The legislation is a limitation only on the corporation, and, being a limitation, it carries with it the corollary that the things authorized or not prohibited are allowable, and, therefore, when the legislature fixed the amount which would be available for the liquidation of the rights of paid-up and withdrawing stockholders, this unquestionably constituted a contract between the parties.

This is so well settled that I will not burden the appellate court with a citation of authorities. They will find most of them referred to in the Home Building & Loan Assn. v. Blasdell decision referred to above.

Not only did it carry with it contractual rights to a segregation of the funds provided in the statute, but it carried with it, as a contractual right, all of the remedies which the then existing laws provided.

But, say defendants, if they be contracts, these contractual rights must surrender to the paramount right of and exercise of the police power. It is, of course, a legal truism that all contracts have impliedly written into them the reserved right of sovereignty, that is, the right of the government, state and national, in the exercise of its police power, to ameliorate or mitigate the effect of contracts, or, even in extreme cases, to abrogate them altogether.

It does not follow, however, by the fact that this reserved right is inherent, that the legislature may arbitrarily abrogate or affect these rights under the guise of the police power, unless it is clear that the legislation promotes the general welfare or affects public health or morals; or, according to the latest thought on the subject, to which I [fol. 29] readily subscribe, changed economic conditions warrant the legislation on the theory that an emergency exists in which the public is vitally interested, and that the

legislation can, therefore, be supported on the basis of the emergent condition. But it must be kept in mind also that legislation sustained on this basis can only be sustained as long as the emergency continues.

From a reading of the opinions in the Milk Case and the Moratorium Case and in the Bond Case (decided by the Court of Appeal of New York), all of which are referred to above, it will be readily seen that these enactments were sustained only on the basis of the emergency, the time limit being fixed in the Act; and, in the Moratorium Case, not only on the basis of the time limit being fixed in the Act, because of the provision in the Act that the rental value was secured to the mortgage holder pending the statutory moratorium, so that he could suffer no eventual loss during the time limitation; and, inasmuch as the United States Supreme Court divided five to four, even on this grudging adjudication, one can appreciate within what narrow bounds the decision hinged.

In the Milk Case, the maximum price for milk was fixed in the act, and the time limit for the term of the enactment was therein fixed. This case was also decided within narrow limits and because of the two-fold fact that the use of milk was a public necessity, vital to the health of the community, and because of the admittedly disastrous economic conditions presently prevailing in the milk industry.

How far, then, do the provisions of Sections 53 to 56, inclusive, trench upon the contractual rights accruing to the plaintiffs, and how far are they permissive under the restrictions of the federal and state constitutions?

The Court can take judicial knowledge of the fact that we have a world depression such as was never known in historic times; that changed conditions in the political, sociological and economic life of the states and nation are so pronounced that they affect every business and industry and even the personal welfare of the individual citizen. No two economists agree upon the causes for this condition, but the facts are so obvious that they are admitted by economists and laymen alike.

While homesteads are organized for the purpose of promoting thrift and industry, and in large cities like New Orleans they deal with a fairly large aggregate of people, they do not in any sense affect the public at large, such as do banks, insurance companies and public service corpora-

tions. They are not, in the true sense, corporations engaged in a business charged with a public interest such as the foregoing are, nor are they quasi-public corporations. They deal entirely with their subscribers and borrowers and with banks and financial institutions which furnish them banking facilities; and, while they are subject to the regulations of the States as to the manner and form in which they do business, persons doing business with them are justified in accepting the law at the time the contract is made as being the law of the contract, without being obliged to consider that their contract rights may be impaired or impinged upon, unless it can be shown that the public at large has acquired an interest, the protection of which renders necessary legislative enactments curtailing their contract rights.

The national bank holidays, the state bank holidays, and the changed conditions in the banking fomulas, wherein [fol. 30] homesteads can no longer borrow from banks with anything like the same degree of freedom that they could before the depression, make it extremely difficult, if not impossible for homesteads to meet the demand of withdrawing stockholders.

This, coupled with the fact that a panic was in existence, and that, following the normal trend of a frightened people, paid-up stockholders in the respective homesteads engaged in a race to become first applicants in order to withdraw their funds therefrom, thus threatening to stagnate the operation of the homestead, legislation was probably advisable.

This being admitted, the defendants say that, inasmuch as legislation was advisable, at least in so far as economic conditions are concerned, therefore, the matter is purely legislative, and, once the legislature has acted, the courts are powerless to change.

This is not an accurate statement of the law. They quote in their brief an expression from Chief Justice O'Niell, which is both pithy and lucid and which does correctly state the law; but what counsel overlooks in the interpretation of the remarks of Mr. Chief Justice O'Niell is the fact that the Chief Justice refers to the reasonableness of the enactment. Of course, where the legislative enactment has reasonable application to the purpose sought to be remedied, and where it could reasonably be assumed that it had it in

mind, it will be judicially assumed that it had it in mind, and the courts would then not interfere with the legislative enactment, whether in practice it actually worked out, as intended, this being a matter which should be corrected by the people and not by the courts.

However, the courts have always held that they reserve to themselves the right to determine whether, in any given case the legislation could be reasonably construed to effectuate the purpose intended, and, if so, it was legislative. True, they have been very liberal in maintaining legislative enactments trenching upon contractual rights, in furtherance of the police power, where they have had any reasonable application to a cure of the evils sought to be eradicated; but I have yet to find a decision of the United States Supreme Court wherein they have permitted the legislature to "run loose", so to speak.

Let us see now just how far these respective sections trench upon the contractual rights of the plaintiffs. Temporarily we will skip Section 53.

Section 54 creates a stagger system of withdrawal, and permits the unregulated payment of applications up to $100.00. Inasmuch as this statute can be maintained, in my judgment, only on the theory of an emergent condition, I consider the purpose of Section 54 to be well within the power of the legislature as an enactment in the interest of the public welfare, as the extremely small amount involved can have no serious effect upon the ultimate payment of the withdrawing stockholders.

Section 54 provides an entirely new method of withdrawal. Instead of segregating a fixed proportion of the net receipts provided for in the Act of 1916, and also paying the withdrawing stockholders in the order of their application for withdrawal, it provides that they shall be paid only twenty-five per centum up to $500.00 of the amount of their withdrawal claims, but then subordinates them for the remaining seventy-five per centum to all other applicants for withdrawal, placing them down to the bottom of the list, and then continuing to pay them twenty-five [fol. 31] per centum each time they come to the top of the list.

Thus it appears that the right of the stockholder to withdraw in the order of precedence as filed is completely taken away from him, and those who were subordinate to him

under the Act of 1916 are paid out twenty-five per centum while his seventy-five per centum is still outstanding, and the funds of the corporation depleted to that extent.

There is a further grant of power to the board of directors, in their discretion, to pay the sum of $100.00 per month to any applicant on the withdrawal list, whether he be the first in order or the last, in direct violation of the order of precedence as stipulated in the Act of 1916, and, through the exercise of this discretion, the board of directors would be authorized to pay a subordinate stockholder in full to the detriment of those standing above him in the order of application, a direct violation of the contract rights under the Act of 1916.

Section 55 again changes the status of a withdrawing member. In so far as his rights to profits after the notice of withdrawal is concerned, they remain the same as they did in the original act. There has been, therefore, no change regarding same, but his rights to withdraw are limited to and prescribed by the provisions of Section 53.

By the last paragraph of Section 55, the rights of the withdrawing stockholder is again restricted, by vesting in the board of directors a discretion to prescribe and grant the order of payment in the form of an allowance on unpaid withdrawals, but limits the power of the board of directors to a maximum of sixty per cent of the rate of dividend currently and actually paid in cash on the shares of continuing members.

Therefore, not only is the withdrawing stockholder deprived of his right, under the provisions of the Act of 1916, to have a reserve of one-half of the net income of the homestead allocated to the liquidation of his stock, but he is further subordinated in the order of payment to the current stockholders, who shall receive dividends in preference to him, and he can only receive (and that within the discretion of the board) not more than sixty per cent of the amount paid to the current stockholders in dividends, a clear deprivation of his contractual rights.

While the right to declare dividends to current stockholders has always been a part of the law, nevertheless this right, under the Act of 1916, could only come into being after one-half of the net proceeds had been set aside.

Section 56 specifically provides that "the attribution to be made from receipts or other assets whatsoever for the

payment of withdrawals shall at all times be under the sole control and administration of the board of directors, which, in its discretion, shall determine from time to time the amount or amounts to be used for the payment of such withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purpose are now superseded by the present statute, with the same effect as if the same had been conventionally waived by all present shareholders and as part of of the subscriptions of all future subscribers to or holders of shares."

Whatever force and effect those provisions may have as to future stockholders, one can certainly not, by a legisla- [fol. 32] tive fiat, convert a contract right into a conventional waiver.

Defendants contend that the provisions of said section reading—

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board, may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

do not alter the position of the plaintiffs, but rather add to their advantages, because they limit the amount, whenever there is a withdrawal list, to not more than twenty-five per cent of the gross receipts, whereas the right to make loans to new or continuing members, under the law as it stood before the Act of 1932, permitted the use of any part of the gross receipts for that purpose. This is not correct. Under the Act of 1916, the homestead could not lend any part of its gross receipts to new or continuing

members, except after provision was made for the setting aside of one-half of the net receipts; the net receipts being the difference between the gross receipts and the current expenses, which, of course, did not include new loans.

This latter provision, if considered by itself, however, may be maintained as an emergency measure and during the continuance of the emergency, on the theory that it was limited in time, was prescribed for the benefit of the withdrawing stockholders as well as the continuing stockholders, and preserved and continued the assets for the whole. However, it must be read in conjunction with its other provisions and with the provisions of the other sections in question.

Section 53 is a general statement of what was intended by the subsequent sections in question, with the exception that it also provides that the withdrawing member shall bear his proportion of losses and charges, not to the time of his withdrawal, but to the time of final payment, which, if this Act is upheld, may be to the final liquidation of the corporation. In my humble judgment, there is nothing whatever in the provisions of these various sections that could reasonably tend to serve the general welfare either in its health, morals or economic conditions.

The effect of these provisions are solely to eliminate the contract rights of the withdrawing members and inure to the benefit of the continuing members, who may receive dividends which eventually will more than equal the entire [fol. 33] value of their shares, in which event they would still be the owners of their shares and the withdrawing stockholder would have nothing whatever, except what the pleasure of the board of directors may see fit to grant him and not in excess of sixty per cent of the dividends which the continuing stockholders receive.

If these provisions are defensible under our constitutional guarantees, one might as well write out of the Constitution these fundamental guarantees of government, and leave to the whims of the respective legislatures the destinies of all contractual relations.

For the foregoing reasons, the injunctions prayed for will be granted, upon each petitioner furnishing bond in a sum to be fixed in each judgment.

New Orleans, May 16, 1934.

(Signed) Walter L. Gleason, Judge.

[fols. 34–38] IN CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

Division "D"—Docket 5

No. 199,578

JOSEPH MITCHELL

versus

CONSERVATIVE HOMESTEAD ASSOCIATION

JUDGMENT

This matter having been submitted to the Court on the merits, the Court considering the law and the evidence to be in favor of the plaintiff and against defendant, for the reasons dictated, signed and filed herein:

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Joseph Mitchell, and against defendant, Conservative Homestead Association, decreeing that Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they affect the notice of plaintiff as a withdrawing shareholder, under the provisions of Act 280 of 1916, are unconstitutional, null and void.

It is further ordered, adjudged and decreed that the right of petitioner to enforce the provisions of Section 7 of Act 280 of 1916 are reserved and continued in full force and effect, and the said defendant is restrained and enjoined from in any manner carrying into effect the provisions of Sections 53, 54, 55 and 56 of Act 140 of 1932, in so far as they may affect the right of the said plaintiff to be paid in the manner and form set out in Section 7 of Act 280 of 1916, and that this injunction issue upon plaintiff furnishing bond in the sum of $1,000.00

Judgment rendered and read in open Court, May 16th, 1934.

Judgment read and signed in open Court, May 25th, 1934.

(Signed) Walter L. Gleason, Judge.

[fol. 39] IN SUPREME COURT OF LOUISIANA

OPINION AND JUDGMENT

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following case:

No. 33075

JOSEPH MITCHELL

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION

Appeal from the Civil District Court, Parish of Orleans, Walter L. Gleason, Judge

This is one of the cases mentioned in the opinion rendered today in the case of Camille V. Treigle v. Acme Homestead Association, No. 33,065. For the reasons given in that case, the judgment appealed from is annulled and reversed, and the demand of the plaintiff is rejected and his suit dismissed at his cost.

Odom, J., dissents.

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[fol. 40] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Joseph Mitchell, plaintiff and appellee, respectfully represents:

I

That the opinion and decree rendered by this Court in this cause on the fourth day of March, 1935, is erroneous and contrary to the law and the evidence, and is prejudicial to petitioner, and that a rehearing should be granted in this matter, for the following reasons, to-wit:

1. That this Court is in error in holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be constitutional.

2. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 10 of Article I of the Constitution of the United States.

3. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, and each of said sections, to be unconstitutional, null and void, as violative of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

4. That this Court erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

[fol. 41] 5. That this Court erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act 140 of 1932, or in any one of these sections".

6. That this Court erred in not holding that a shareholder in a building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act 140 of 1932, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, which vested right of property is protected by the Fourteenth Amendment to the Constitution of the United States.

7. That this Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932, and each of said sections, to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and, therefore,, unconstitutional.

8. That this Court erred in not holding Sections 53 and 56 to be unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion

to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

9. That this Court erred in holding that the plaintiff in this cause has no cause or right of action.

10. That this Court erred in reversing and annulling the judgment of the District Court appealed from, and in rejecting plaintiff's demand and dismissing his suit.

11. That this Court erred in not affirming the judgment of the District Court appealed from.

[fol. 42] II

Petitioner shows further that he will file in connection with this petition brief in support thereof; and that for the reasons herein above set forth and to be amplified in the brief, a rehearing should be granted and that finally the Court affirm the judgment appealed from.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case, and that finally the Court affirm the judgment of the District Court appealed from, decreeing Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be unconstitutional as violative of Section 10 of Article I and Section 1 of Amendment XIV of the Constitution of the United States.

(Signed) Arthur B. Leopold, Attorney for Petitioner.

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[fols. 43 & 44] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ORDER DENYING REHEARING—April 1, 1935

BY THE COURT:

It is ordered that the rehearing applied for in this case be refused.

[fol. 45] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES —Filed June 21, 1935

To the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Joseph Mitchell respectfully shows:

1. Petitioner is the plaintiff in the above numbered and entitled cause.

2. On October 25, 1932, petitioner filed a suit in the Civil District Court for the Parish (County) of Orleans, State of Louisiana, in which petitioner alleged that as an owner of $10,000.00 of the full paid capital stock of Conservative Homestead Association, a building and loan corporation, organized under the laws of the State of Louisiana, he had, in accordance with its charter and by-laws and the law of the State of Louisiana then in force, notified said Homestead Association of his intention to withdraw his said stock investment, which notification of intention to withdraw fixed, determined and vested a valuable property right in petitioner, and made executory a contractual obligation between said Conservative Homestead Association and petitioner, obliging said Association to repay to petitioner his said stock investment as provided in said charter and by-laws and the laws of Louisiana then in force.

In said suit petitioner alleged that more than sixty days subsequent to his said notice of withdrawal Act No. 140 of the Legislative Acts of Louisiana for the year 1932 was adopted and became law, approved July 12, 1932, and known as "Louisiana Homestead and Building and Loan Statute"; and that Sections 53, 54, 55 and 56 of said Act 140 of 1932 impair the obligations of petitioner's contract with said Homestead Association and deprive petitioner of his [fol. 46] said vested property rights without due process, and are, therefore, repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States.

Petitioner in said suit prayed for judgment declaring said Sections 53, 54, 55 and 56 of said Act 140 of 1932 of Louisiana to be unconstitutional, as repugnant to said provisions of the Constitution of the United States, and that the Conservative Homestead Association be enjoined from proceeding under the same.

In said suit there was judgment of the District Court in petitioner's favor, decreeing said sections of said Act to be unconstitutional and enjoining the Homestead as prayed.

3. An appeal from said judgment was taken by said Conservative Homestead Association to the Supreme Court of the State of Louisiana; and on March 4, 1935, the Supreme Court of the State of Louisiana reversed said judgment and decreed said Sections 53, 54, 55 and 56 of said Act 140 of 1932 constitutional and valid and not repugnant to the Constitution of the United States, and dismissed petitioner's suit.

Thereafter petitioner applied for a rehearing which was denied by said Supreme Court of Louisiana on April 1, 1935.

4. Said Supreme Court of the State of Louisiana is the highest court of the State of Louisiana in which a decision in the suit could be had.

5. In said cause there is drawn in question the validity of a statute of the State of Louisiana on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; in that in said suit petitioner alleges that Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of the Legislative Acts of the State of Louisiana known as "Louisiana Homestead and Building and Loan Statute" are repugnant to Article I, Section 10, and Amendment XIV, Section 1, of the Constitution of the United States, and prays that said sections of said act be decreed unconstitutional, and that the defendant Building and Loan Association be enjoined from proceeding thereunder, in that said sections of said act impair the obligations of the contract between petitioner and the defendant Conservative Homestead Association, and deprive petitioner of his vested property rights without due process of law.

Wherefore, petitioner prays for the allowance of an appeal herein from said Supreme Court of the State of Louisi-

ana, to the Supreme Court of the United States, in order that the said decision of the Supreme Court of the State [fol. 47] of Louisiana may be examined and reviewed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner prays an order touching the security to be required of him, and the approval of such bond as is required in this case.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated, and more fully set out in the assignment of errors filed herewith.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex. W. Swords, (Sgd.) A. Giffen Levy, Attorneys for Joseph Mitchell, Petitioner and Proposed Appellant.

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[fol. 48] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ASSIGNMENT OF ERRORS ACCOMPANYING PETITION FOR APPEAL TO SUPREME COURT OF UNITED STATES—Filed June 21, 1935

Joseph Mitchell, plaintiff in the above cause, praying for an appeal herein to the Supreme Court of the United States, assigns the following errors in the record and proceedings in said cause:

1. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Article I, Section 10, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

2. In said suit there was drawn in question the validity of Sections 53, 54, 55 and 56 of Act No. 140 of the Legislative Acts of the State of Louisiana approved July 12, 1932, and known and cited as "Louisiana Homestead and Building and Loan Statute", on the ground that they are repugnant to Amendment XIV, Section 1, of the Constitution of the United States, and the decision of the Supreme Court of the State of Louisiana is in favor of the validity of said Statute, which decision is hereby assigned as error.

3. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of said Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 10 of Article I of the Constitution of the United States.

4. The Supreme Court of Louisiana erred in not holding Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections, to be repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 49] United States.

5. The Supreme Court of Louisiana erred in holding that Section 10 of Article I of the Constitution of the United States "does not protect contracts which deal with a subject matter within the control of Congress or the Legislature".

6. The Supreme Court of Louisiana erred in holding that there is nothing "unreasonable, arbitrary or discriminating in Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, or in any one of these sections".

7. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawal of 50% of net receipts, and of which vested right of property he is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Louisiana erred in not holding that a shareholder in a Louisiana building and loan association, who had given notice of withdrawal more than sixty days prior to the effective date of Act No. 140 of 1932 of Louisiana, has a contractual obligation obliging the Building and Loan Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No 140 of 1932 of Louisiana, in violation of Article I, Section 10, of the Constitution of the United States.

9. The Supreme Court of Louisiana erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several boards of directors of building and loan associations the unregulated discretion to withhold payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

10. The Supreme Court of Louisiana erred in not hold-
[fol. 50] ing Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, and each of said sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the police power, and therefore unconstitutional.

For which errors, Joseph Mitchell prays that said judgment herein of the Supreme Court of the State of Louisiana dated March 4, 1935, rehearing denied April 1, 1935, in the above entitled cause, be reversed, and judgment rendered in favor of the said Joseph Mitchell.

Dated June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex W. Swords, (Sgd.) A. Giffen Levy, Counsel for Joseph Mitchell.

[fol. 51] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES

The petition of Joseph Mitchell for an appeal in the above suit to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, and the assignment of errors and statement of basis of jurisdiction filed therewith, and the record of said suit having been considered, it is

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, as prayed in said petition, and that the clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record and proceedings in the above suit and transmit the the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that said Joseph Mitchell shall give good and sufficient security, in the sum of One Thousand ($1,000.00) Dollars, that said appellant shall prosecute said appeal to effect, and if said appellant fail to make his plea good he shall answer all costs.

The said appellant now presenting a bond in the sum of One Thousand ($1,000.00) Dollars, with Joseph Bohrer, of New Orleans, Louisiana, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated June 21st, 1935.

(Sgd.) Charles A. O'Niell, Chief Justice of the Supreme Court of Louisiana. (Seal.)

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[fols. 52-61] Bond on appeal for $1,000.00, approved June 21, 1935, omitted in printing.

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[fol. 62] Citation in usual form, showing service on D. H. Theard, omitted in printing.

[fol. 63] IN SUPREME COURT OF LOUISIANA

No. 33075

[Title omitted]

AGREEMENT OF COUNSEL AS TO TRANSCRIPT OF RECORD—Filed June 22, 1935

It is agreed between counsel for appellant and counsel for appellee in the above matter, in which an appeal has been ordered from the Supreme Court of Louisiana to the Supreme Court of the United States, that the Clerk of the Supreme Court of Louisiana shall include the entire record in the transcript; and that in making up the transcript the said Clerk may use one of the duplicate transcripts of the cause now in his office.

New Orleans, Louisiana, June 21, 1935.

(Sgd.) Arthur B. Leopold, (Sgd.) Alex W. Swords,
(Sgd.) A. Giffen Levy, Counsel for Appellant.
(Sgd.) Delvaille H. Theard, Counsel for Appellee.

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[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 65] SUPREME COURT OF THE UNITED STATES

STATEMENT BY APPELLANT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 31, 1935

Comes now Joseph Mitchell, the appellant in the above entitled cause, and states that he adopts his assignment of error as his statement of the points to be relied upon.

Said appellant further states that the following parts of the record as filed in this Court are deemed necessary for the consideration of the case, and are designated as the parts of the record to be printed.

| Title of Paper | Record Pages |
|---|---|
| 1. Plaintiff's petition | 1 to 10 |
| 2. Defendant's answer and exception | 11 to 18 |
| 3. Reasons of District Judge | 25 to 33 |
| 4. District Court's decree | 34 |
| 5. Opinion and decree of Supreme Court of Louisiana | 39 |
| 6. Application for rehearing | 40 to 42 |
| 7. Denial of application for rehearing April 1, 1935 | 43 |
| 8. Petition for appeal to this Court | 45 to 47 |
| 9. Assignment of errors | 48 to 50 |
| 10. Statement of Basis of Jurisdiction | 54 to 60 |
| 11. Order allowing appeal | 51 |
| 12. Bond for appeal | 52 to 53 |
| 13. Citation of appeal and return | 62 |
| 14. Agreement on Transcript | 63 |
| 15. Proof of service required by Rule 12, paragraph 2 | 61 |
| 16. Certificate of Clerk Supreme Court of Louisiana | 64 |
| 17. This Statement of Points to be relied on and parts of record necessary for consideration and to be printed. | |


Arthur B. Leopold, Alex. W. Swords, A. Giffen Levy, Counsel for Joseph Mitchell, Appellant.

Service acknowledged this July 29, 1935.

Delvaille H. Theard, Attorney for Defendant Thrift Homestead Association. Address: 406 Canal Bank Bldg., New Orleans, Louisiana.

[fol. 66] [File endorsement omitted.]

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Endorsed on cover: File No. 39,870. Louisiana, Supreme Court. Term No. 316. Joseph Mitchell, Appellant, vs. Conservative Homestead Association. Filed July 31, 1935. Term No. 316, O. T. 1935.

FILE COPY

FILED
JUL 26 1935
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

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# No. 287

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CAMILLE V. TREIGLE,

*Appellant,*

*vs.*

ACME HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

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## STATEMENT AS TO JURISDICTION.

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ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellant.*

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 287

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CAMILLE V. TREIGLE,

*Appellant,*

*vs.*

ACME HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

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Pursuant to Rule 12, paragraph 1, of the Rules of the Supreme Court of the United States, Camille V. Treigle, applicant for appeal herein, files this his statement showing the basis upon which he contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in

such State in which a decision in this case could be had; and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal. * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute the validity of which is involved are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at page 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefor are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their

receipt, and whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawals shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the

association's office. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as herein-

after set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against any association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1935, Vol. 160, No. 5, page 637 *et seq.*

This application for appeal to review said judgment is presented for allowance on this 21 day of June, 1935.

(d) The record shows that:

Applicant for appeal, Camille V. Treigle, owns $5,000 paid up capital stock of Acme Homestead Association acquired by him in 1929 and prior, and on May 19, 1932, in accordance with by-laws of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902 as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, he applied to the said association to withdraw and notified said association of his intention to withdraw the amount of his said stock holdings invested in said association.

The said provisions of the by-laws of the Acme Homestead Association and of Section 7 of Act No. 120 for the year 1902 as reenacted by Act No. 280 for the year 1916 of the Legislative Acts of Louisiana are as follows:

The by-laws, Art. IV, Sec. 6, provide that:

> Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate.

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the

demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of his intention to withdraw, and nothing had been paid him on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 21, 1932, brought suit against the said Acme Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional, as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50 per cent of its net receipts to pay withdrawals until applicant was paid, and to pay applicant in full in his turn when he reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of his property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

*Kansas City Southern Ry. Co.* v. *Road Improvement District No.* 3, 266 U. S. 379, 386; 69 L. Ed. 335.

*Milheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

*Louisville & N. R. Co.* v. *Melton*, 218 U. S. 36, 49; 54 L. Ed. 921.

*American Sugar Ref. Co.* v. *State of Louisiana*, 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Signed) ALEX W. SWORDS,
" A. GIFFEN LEVY.
*Counsel for Camille V. Treigle, Applicant for Appeal.*

June 21, 1935.

(6727-C)

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 288

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CAMILLE V. TREIGLE,

*Appellant,*

*vs.*

THRIFT HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellant.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

# No. 288

CAMILLE V. TREIGLE,

*Appellant,*

*vs.*

THRIFT HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

## STATEMENT AS TO JURISDICTION.

Pursuant to Rule 12, paragraph 1, of the Rules of the Supree Court of the United States, Camille V. Treigle, applicant for appeal herein, files this his statement showing the basis upon which he contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in such State in which a decision in this case could be had;

and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."
>
> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute, the validity of which is involved, are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at pages 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefor are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing

members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawal shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have full authority to prescribe such rules as may in its dis-

cretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to allowance or

dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list,

not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1935, Vol. 160, No. 5, page 646 *et seq.*

This application for appeal to review said judgment is presented for allowance on this 21st day of June, 1935.

(d) The record shows that:

Applicant for appeal, Camille V. Treigle, owns $2,200 paid up capital stock of Thrift Homestead Association acquired by him in 1927 and prior, and on May 19, 1932, in accordance with charter of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902 as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, he applied to the said association to withdraw and notified said association of his intention to withdraw the amount of his said stock holdings invested in said association.

The said provisions of the charter of the Thrift Homestead Association and of Section 7 of Act No. 120 for the

year 1902 as reenacted by Act No. 280 for the year 1916 of the Legislative Acts of Louisiana are as follows:

The Charter, Art. IV, provides that:

> "Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate."

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such de-

mands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of his intention to withdraw, and nothing had been paid him on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 21, 1932, brought suit against the said Thrift Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional, as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50% of its net receipts to pay withdrawals until applicant was paid, and to pay applicant in full in his turn when he reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of his property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

*Kansas City Southern Ry. Co.* v. *Road Improvement District No. 3*, 266 U. S. 379, 386; 69 L. Ed. 335.

*Milheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

*Louisville & N. R. Co.* v. *Melton*, 218 U. S. 36, 49; 54 L. Ed. 921.

*American Sugar Ref. Co.* v. *State of Louisiana*, 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Signed) ALEX W. SWORDS,
" A. GIFFEN LEVY.
*Counsel for Camille V. Treigle, Applicant for Appeal.*

June 21, 1935.

(6728-C)

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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 289

---

TREIGLE SASH FACTORY, INC.,
*Appellant,*

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellant.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

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# No. 289

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TREIGLE SASH FACTORY, INC.,

*Appellant,*

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

Pursuant to Rule 12, paragraph 1, of the rules of the Supreme Court of the United States, Treigle Sash Factory, Inc., applicant for appeal herein, files this its statement showing the basis upon which applicant contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in

such State in which a decision in this case could be had; and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."
>
> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute, the validity of which is involved, are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at page 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefore are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordi-

narily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal; applications for withdrawals shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his applications for withdrawals shall be paid out of funds remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have

full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the

collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent

the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1935, Vol. 160, No. 5, page 647 *et seq.*

This application for appeal to review said judgment is presented for allowance on this 21st day of June, 1935.

(d) The record shows that:

Applicant for appeal, Treigle Sash Factory, Inc., owns $20,200 paid up capital stock of Conservative Homestead Association, acquired by it prior to July 31, 1931, and on July 31, 1931, in accordance with Charter and By-laws of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902, as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, is applied to the said association to withdraw and notified said association of its intention to withdraw the amount of its said stock holdings invested in said association.

The said provisions of the charter and by-laws of the Conservative Homestead Association and of Section 7 of Act No. 120 for the year 1902, as reenacted by Act No. 280 for the year 1916, of the Legislative Acts of Louisiana, are as follows:

Charter, Art. IV:

"Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate."

By-laws, Sec. IV:

"Paid-up stock shall be issued subject to the following terms and conditions:

"1. Dividends are payable in cash semi-annually.

"2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of withdrawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in payment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association."

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any times by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of its intention to withdraw, and nothing had been paid said applicant on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 21, 1932, brought suit against the said Conservative Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional, as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50% of its net re-

ceipts to pay withdrawals until applicant was paid, and to pay applicant in full in its turn when said applicant reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of its property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

*Kansas City Southern Ry. Co.* v. *Road Improvement District No.* 3, 266 U. S. 379, 386; 69 L. Ed. 335.

*Milheim* v. *Moffatt Tunnel Improvement District,* 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

*Louisville & N. R. Co.* v. *Melton,* 218 U. S. 36, 49; 54 L. Ed. 921.

*American Sugar Ref. Co.* v. *State of Louisiana,* 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Sgd.) ALEX W. SWORDS,
" A. GIFFEN LEVY.
*Counsel for Treigle Sash Factory, Inc.,*
*Applicant for Appeal.*

June 21, 1935.

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FILED
JUL 26 1935
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CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 290

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TREIGLE SASH FACTORY, INC.,
*Appellant,*

*vs.*

UNION HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellant.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

---

# No. 290

---

TREIGLE SASH FACTORY, INC.,

*Appellant,*

*vs.*

UNION HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

Pursuant to Rule 12, paragraph 1, of the rules of the Supreme Court of the United States, Treigle Sash Factory, Inc., applicant for appeal herein, files this its statement showing the basis upon which applicant contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in

such State in which a decision in this case could be had; and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."
>
> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute, the validity of which is involved, are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at pages 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefore are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their

receipt, and whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawal shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the

association's office. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as herein-

after set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent

the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1937, Vol. 160, No. 5, page 647 *et seq.*

This application for appeal to review said judgment is presented for allowance on this 21st day of June, 1935.

(d) The record shows that:

Appellant for appeal, Treigle Sash Factory, Inc., owns $30,000 paid up capital stock of Union Homestead Association acquired by it prior to May 19, 1932; and on May 19, 1932, in accordance with Charter of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902 as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, it applied to the said association to withdraw and notified said association of its intention to withdraw the amount of its said stock holdings in said association.

The said provisions of the charter of the Union Homestead Association and of Section 7 of Act No. 120 for the year 1902 as reenacted by Act No. 280 for the year 1916 of the Legislative Acts of Louisiana are as follows:

The Charter, Art. IV, provides that:

> Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate.

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the

demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of its intention to withdraw, and nothing had been paid said applicant on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 21, 1932, brought suit against the said Union Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional, as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50% of its net receipts to pay withdrawals until applicant was paid, and to pay applicant in full in its turn when said applicant reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of its property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

*Kansas City Southern Ry. Co.* v. *Road Improvement District No.* 3, 266 U. S. 379, 386; 69 L. Ed. 335.

*Milheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

*Louisville & N. R. Co.* v. *Melton*, 218 U. S. 36, 49; 54 L. Ed. 921.

*American Sugar Ref. Co.* v. *State of Louisiana*, 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Sgd.) ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Treigle Sash Factory, Inc.,*
***Applicant for Appeal.***

June 21, 1935.

(6730-C)

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CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 316

---

JOSEPH MITCHELL,

*Appellant,*

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

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## STATEMENT AS TO JURISDICTION.

---

ARTHUR B. LEOPOLD,
ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellant.*

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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 316

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JOSEPH MITCHELL,

*Appellant,*

*vs.*

CONSERVATIVE HOMESTEAD ASSOCIATION.

---

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

## STATEMENT AS TO JURISDICTION.

---

Pursuant to Rule 12, paragraph 1, of the rules of the Supreme Court of the United States, Joseph Mitchell, applicant for appeal herein, files this his statement showing the basis upon which he contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in such State in which a decision in this case could be had;

and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."
>
> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute, the validity of which is involved, are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at pages 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefore are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordi-

narily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawals shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have

full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the

collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing mem-

bers, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1935, Vol. 160, No. 5, page 648 *et seq.* This application for appeal to review said judgment is presented for allowance on this 21st day of June, 1935.

(d) The record shows that:

Applicant for appeal, Joseph Mitchell, owns $10,000 paid up capital stock of Conservative Homestead Association acquired by him prior to May 30, 1931, and on May 30, 1931, in accordance with Charter and By-laws of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902 as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, he applied to the said association to withdraw and notified said association of his intention to withdraw the amount of his said stock holdings invested in said association.

The said provisions of the charter and by-laws of the

Conservative Homestead Association and of Section 7 of Act No. 120 for the year 1902 as reenacted by Act No. 280 for the year 1916 of the Legislative Acts of Louisiana are as follows:

Charter, Art. IV:

"Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate."

By-laws, Sec. IV:

"Paid-up stock shall be issued subject to the following terms and conditions:

"1. Dividends are payable in cash semi-annually.

"2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of withdrawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in payment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association."

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of his intention to withdraw, and nothing had been paid him on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 25, 1932, brought suit against the said Conservative Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50% of its net re-

ceipts to pay withdrawals until applicant was paid, and to pay applicant in full in his turn when he reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of his property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

*Kansas City Southern Ry. Co.* v. *Road Improvement District No. 3*, 266 U. S. 379, 386; 69 L. Ed. 335.

*Milheim* v. *Moffatt Tunnel Improvement District*, 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

*Louisville & N. R. Co.* v. *Melton*, 218 U. S. 36, 49; 54 L. Ed. 921.

*American Sugar Ref. Co.* v. *State of Louisiana*, 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Sgd.) ARTHUR B. LEOPOLD,
" ALEX W. SWORDS,
" A. GIFFEN LEVY,
*Counsel for Joseph Mitchell, Applicant for Appeal.*

June 21, 1935.

FILE COPY

Nos. 287, 288, 289, 290 and 316

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 287 Camille V. Treigle, vs. Acme Homestead Assn.,
*Appellant.* *Appellee.*

No. 288 Camille V. Treigle, vs. Thrift Homestead Assn.,
*Appellant.* *Appellee.*

No. 289 Treigle Sash Factory, Inc., vs. Conservative Homestead Assn.,
*Appellant.* *Appellee.*

No. 290 Treigle Sash Factory, Inc., vs. Union Homestead Assn.,
*Appellant.* *Appellee.*

No. 316 Joseph Mitchell, vs. Conservative Homestead Assn.,
*Appellant.* *Appellee.*

APPEALS FROM THE SUPREME COURT OF LOUISIANA

ORIGINAL BRIEF IN BEHALF OF APPELLANTS

ALEX W. SWORDS,
A. GIFFEN LEVY,
*Counsel for Appellants.*

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These opinions are officially reported as follows:

| Number here | Title | Official Report |
|---|---|---|
| 287, | Treigle vs. Acme Homestead Assn., | 181 Louisiana, page 941. |
| 288, | Treigle vs. Thrift Homestead Ass'n., | 181 Louisiana, page 971. |
| 289, | Treigle vs. Conservative Homestead Ass'n., | 181 Louisiana, page 972. |
| 290, | Treigle vs. Union Homestead Ass'n., | 181 Louisiana, page 973. |
| 316, | Mitchell vs. Conservative Homestead Ass'n., | 181 Louisiana, page 973. |

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*Appellant.* *Appellee.*

APPEALS FROM THE SUPREME COURT OF LOUISIANA

## ORIGINAL BRIEF IN BEHALF OF APPELLANTS

### STATEMENT OF THE CASE

Appellants, owning shares of capital stock of the defendant Building & Loan Associations, applied to withdraw and be paid the value of such stock. (See petition, articles II

and VI, R. 1 and 2, and defendants' admission in answer, articles II and VI, R. 11 and 12.)

The by-laws of the Associations (R. 18) and the provisions of the Louisiana statute then in force and under which the stock had been issued, (Sec. 7 of Act 120 of 1902 as amended by Act 280 of 1916) provided that appellants' notices of withdrawal should be listed with other notices of withdrawal and paid in full in the order received upon reaching the top of the list; and that if not paid within sixty days, the Association must create a fund out of which to pay same by allocating to such fund not less than 50% of its net receipts. (The aforesaid by-law, and said section 7 of Act 120 of 1902 as amended by Act 280 of 1916 are reproduced in appendix hereto, pp. I *et seq.*)

More than sixty days after appellants had thus gone on the withdrawal list, and they not having been paid, Act 140 of 1932 of Louisiana was approved and became law. This statute, and particularly Sections 53, 54, 55 and 56 thereof, undertook to change completely and retroactively the payment of withdrawals by Building & Loan Associations. (These sections are reproduced in appendix hereto, pp. V, *et seq.*)

Appellants sued the Associations to enjoin them from applying, as to appellants, the provisions of said Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana, on the ground that these sections impaired the contractual obligations of the Associations to pay appellants' withdrawals in full when they reached the top of the list, and to allocate a definite segment of receipts to pay such withdrawals in violation of Article 1, Section 10 of the Constitution of the United States; and that said sections of said Act furthermore deprived appellants of property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. (See petition R. 1 *et seq.*)

There was judgment in the State District Court declaring such sections repugnant to said provisions of the Constitution, and the Associations appealed to the Supreme Court of Louisiana, which reversed the District Court and decreed the said sections of the Louisiana statute constitutional, basing such decree upon its opinion that the sections in question were reasonable exercise of the police power. (R. 30, 31 *et seq.*)

The Louisiana Supreme Court denied a rehearing (R. 51), and appellants appealed to this Court.

The facts are not disputed, and the Supreme Court of Louisiana in its opinion (R. 31 *et seq.*) sets forth the case quite adequately, and concludes its summing up of the facts by saying (R. 38):

> "There is no doubt, however, that the Act of 1932 did prevent some of the many withdrawing shareholders in building and loan associations throughout the state from collecting the amount of their shares in full at the time when payment would have been made if this statute had not been adopted. We shall rest this decision, therefore, upon the proposition that the Act of 1932 did deprive the plaintiff of an advantage, and of a valuable right, which he enjoyed by virtue of having his name on the withdrawal list more than sixty days before the statute was adopted. The question, therefore, is whether the Legislature could deprive the plaintiff of the advantage and right which he enjoyed, without violating the constitutional limitation forbidding the passing of a law impairing the obligation of contracts, or divesting vested rights."

The Supreme Court of Louisiana based its decision largely, if not entirely, upon the proposition (R. 39 and 40):

> "From the fact—of which there is no dispute—that the business of building and loan associations is of a public character, or matter 'of public utility and advantage' and therefore subject to regulation and control by the Legislature in the exercise of the police power, it must follow that the authority of the Legislature in that respect cannot be frustrated or forestalled by the making of private contracts with building and loan associations. The reason is that the constitutional prohibition against legislation 'impairing the obligation of contracts' does not protect contracts which 'deal with a subject-matter which lies within the control of the Congress,' or the Legislature. It was so said by Chief Justice Hughes in the Gold Clause cases."

The several appeals present identical issues of fact and law, with differences only in names and amounts of stock involved.

## SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

Appellants, at the hearing of these causes, will urge the following assigned errors, being assignments numbered 3 to 10, respectively (Record pages 54 *et seq.*)

1. The Court erred in not holding Sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana to be repugnant to Section 10 of Article I of the Constitution.

2. The Court erred in not holding said sections of said Act to be repugnant to Section 1 of Amendment XIV of the Constitution.

3. The Court erred in holding that Section 10 of Article I of the Constitution "does not protect contracts which

deal with a subject matter within the control of Congress or the Legislature."

4. The Court erred in holding that there is nothing unreasonable, arbitrary or discriminating in said sections of said Louisiana statute.

5. The Court erred in not holding that a shareholder in a Louisiana Building and Loan Association, who had given notice of withdrawal more than 60 days prior to the effective date of Act. No. 140 of 1932 of Louisiana, has a vested right of property to be paid in full upon reaching the top of the withdrawal list, and to compel the allocation to withdrawals of 50% of net receipts, and of which vested right of property said shareholder is deprived by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana, in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Court erred in not holding that a shareholder in a Louisiana Building and Loan Association, who had given notice of withdrawal more than 60 days prior to the effective date of Act No. 140 of 1932 of Louisiana has contractual obligations obliging the Association to pay him in full upon his reaching the top of the withdrawal list, and obliging it to allocate 50% of its net receipts to care for withdrawals, which contract obligations are impaired by Sections 53, 54, 55 and 56 of Act No. 140 of 1932 of Louisiana in violation of Article I, Section 10 of the Constitution of the United States.

7. The Court erred in not holding Sections 53 and 56 of Act No. 140 of 1932 of Louisiana and each of said sections to be repugnant to the Fourteenth Amendment to the Constitution of the United States in that these sections delegate to the several Boards of Directors of Building and Loan Associations the unregulated discretion to withhold

payment of petitioner's withdrawal shares, while themselves continuing to enjoy the use thereof.

8. The Court erred in not holding Sections 53, 54, 55 and 56 of Act. No. 140 of 1932 of Louisiana, and each of said sections to be unreasonable invasions of the right of property and unreasonable impairments of contract obligations under the guise of the Police Power, and therefore, unconstitutional.

## ARGUMENT

### Summary

It is proposed to show the unconstitutionality of the statute in question by establishing the following propositions:

1. When the owner of shares in a Louisiana Building and Loan Association gave notice of his intention to withdraw, and more than sixty days had elapsed without his receiving payment, all prior to Act 140 of 1932, definite contract obligations and vested property rights existed, which were protected by Constitutional guarantee.

   For when a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement.

   *Coombes vs. Getz*, 285 U. S. 434.
   *Ettor vs. Tacoma*, 228 U. S., 148.
   *Pacific Mail SS. Co. vs. Joliffe*, 69 U. S. 450.
   *Bedford vs. Eastern Building & Loan Assn.*, 181 U. S., 227.

2. By the provisions of Act 140 of 1932 the Louisiana Legislature has impaired the contract obligations of the Building and Loan Associations to appellants, and has taken appellants' property.

3. The police power is reserved to the State, and under it every business may be regulated for the public welfare, but only in a reasonable manner, and not arbitrarily or with discrimination.

While Courts may not pass on the wisdom of the legislation, yet they have full power and it is their duty to determine whether the exercise of the police power is reasonable.

Legislatures may not under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.

*Home Bldg. & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398.
*Nebbia vs. New York,* 291 U. S., 502.
*Washington ex rel Seattle Title Trust Co. vs. Roberge,* 278 U. S., 116.

4. The legislation in question bears no reasonable relation to the public welfare, and is unjust and discriminatory.

(a) The object sought to be attained by the Legislature is declared by the Supreme Court of Louisiana to be

"to benefit indiscriminately all members of such associations, and the general public, by saving these institutions from dissolution which they were menaced with, by the financial depression;" (R. 36) and "the object of saving the building and loan associations from liquidation and of reviving their busi-

ness, and of thereby benefiting all of the shareholders as a class and the public generally." (R. 45)

(b) The Louisiana Legislature declares the statute to be a permanent codification of law on the subject of Building and Loan Associations, (See Title to Act 140 of Louisiana Legislative Acts—Official Reports—1932, page 454.) and recognizes and affirms throughout the statute what is and has always been the genius of such associations, namely the right of shareholders therein to withdraw their investment.

(c) When the object sought by legislation is the saving of Building and Loan Associations from liquidation and reviving their business in behalf of the public welfare, there is no reasonable relationship between that object and provisions that instead of paying withdrawals in full as they reach the top of the withdrawal list, such withdrawals shall each be paid to the extent of 25% only as they respectively reach the top of the list, after which each goes to the foot of the list; because it is mathematically demonstrable that in any given time precisely the same amount of money will be paid out in either case.

(d) When the legislature recognizes that the right of shareholders in a Building and Loan Association to withdraw is consonant with the public welfare, prohibits payment of dividends to withdrawing shareholders, while permitting unlimited dividends in the discretion of the boards of directors to be paid to continuing members, and then delegates to boards of directors the power to prevent withdrawals indefinitely, there is unreasonableness and unconstitutionality.

*Washington, ex rel Seattle Title Trust Co. vs. Roberge,* 278 U. S., 116.
*Eubank vs. Richmond,* 226 U. S., 137.

(e) Legislation which delegates to private boards of directors of Building and Loan Associations the unlimited discretionary power to suspend the operation of laws unregulated by any prescribed norm or standard is unreasonable.

5. The legislation cannot be justified as emergency legislation, because not limited as to time or otherwise apposite to emergency relief.

*Worthen vs. Thomas,* 292 U. S., 426.
*Home Building & Loan Ass'n. vs. Blaisdell,* 290 U. S., 396.

**Foreword**

*May it please the Court:*

We desire preliminarily to make it clear that appellants' charges of unconstitutionality are directed at the legislation in question only as it affects appellants; and we do not suggest that the statute is invalid prospectively. Appellants insist only that as retroactively applied to appellants, who had given notice of intention to withdraw more than sixty days before Act 140 of 1932 was law, such legislation is invalid, unjust, discriminatory, arbitrary, unreasonable and unconstitutional.

We hasten to make clear that we are not concerned with every obligation of appellants' contract. We are concerned with those obligations only which arise after appellants gave notice of intention to withdraw. No other obligations are involved. We do not discuss and it is unnecessary to pass upon the constitutionality of Act 140 of 1932 as to a shareholder who had not given the withdrawal notice.

We proceed to a consideration of the constitutional questions involved.

## I

**These cases involve definite contract obligations and rights of property.**

The Supreme Court of Louisiana has chosen to rest its decisions in these cases upon the proposition that the statute in question (Act 140 of the Louisiana laws of 1932) deprived appellants of valuable contract and property rights which they enjoyed by virtue of having their names on the withdrawal list more than sixty days before the statute was adopted.

The Supreme Court of Louisiana, moreover, prior to the adoption of the 1932 statute, declared the rights of a withdrawing shareholder under the prior statute of 1916.

In *State ex rel. Orlando vs. Reliance Homestead Ass'n.*, 174 La. 980; 142 So. 146, the Louisiana Supreme Court considered the rights of withdrawing shareholders and said:

> "Under section 7 of the act, as amended, (Act 280 of 1916), a member of the association may withdraw his shares of stock at any time by giving written notice of his intention to do so and provision is made for the payment of the amount due him. In case the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands, within a specified time, then one-half its receipts shall thereafter be set aside and applied to the liquidation of such demands.
>
> "The provisions of the act for the payment of such claims are mandatory. If the association has on hand funds out of which such claims may be paid under the law, it is the plain duty of the board of directors to make provisions for their payment,

and in case it refuses to do so, mandamus proceedings will lie to compel the performance of that duty.

> **"By giving to shareholders the right to withdraw their shares and by prescribing the method by which funds are to be made available for the payment of their claims when their applications to withdraw are filed, the lawmaker gave to them a privilege which cannot be denied them."**

In *Bedford vs. Eastern Building & Loan Ass'n.*, 181 U. S., 227, this Court had occasion some years since to pass upon whether a share of stock in a Building and Loan Association, together with the Association's by-laws and the notice in accordance therewith by the shareholder of his application for a loan constitute a contract. The notice by the shareholder in the instant cases being of intention to withdraw the amount of the shares instead of to obtain a loan, in no wise alters the principles involved.

This Court held that the share of stock in a Building and Loan Association, and the by-laws thereof, together with the giving by the shareholder of the notice of application for a loan to which, under the by-laws, the shareholder was entitled, constitute a contract, the obligation of which could not be impaired by subsequent legislation under the guise of the police power.

In the language of the Court:

> "The question is, Did the subscription to the stock of the association, its issuance, and the application for a loan in pursuance of it, constitute a contract which was inviolable by the state legislature? We think the answer should be in the affirmative. By his subscription to stock of the association Bedford became a member of the association, bound to the performance of what its by-laws and charter

> required of him, and entitled to exact the performance of what the by-laws and charter required of the association. Each acquired a right to what the other promised, and there were all the elements of a contract."

**The analogy is striking. In the Bedford case the by-laws forming part of the certificate provided the holder was entitled to a loan upon making application; in the instant case, the certificate and by-laws forming part of the certificate and the law in force at the time stipulate that the holder shall be entitled to withdraw his money in full under definite conditions by giving notice of such intention. This Court has declared the one to be a contract, protected by the Constitution against impairment. What of the other? Is it not likewise a contract?**

The pleadings in these cases, to which specific reference was made in the statement of the case, show the following admitted facts:

1. That appellants owned full paid withdrawable shares in the defendant associations.

2. That more than sixty days prior to the effective date of Act 140 of 1932 appellants gave notice to the associations of intention to withdraw as such shareholders.

3. That appellants were not paid.

The by-laws of the defendant associations provided that shareholders could withdraw at any time by giving notice to that effect, whereupon the notice would be registered in the order received, and paid in the same order. The by-laws stipulated that the withdrawing shareholder should be paid the face value of the stock together with all unwithdrawn declared dividends, less proportionate share of loss-

es, if any. (The by-laws in these several cases are alike for all practical purposes.)

The Louisiana statute (Act 280 of 1916) in force when appellants acquired their stock, when they gave notice of withdrawal and which was repealed by Act 140 of 1932, provided the same withdrawal rights and privileges as the by-laws, and provided further:

> "Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

These provisions of the Act of 1916 entered into and formed part of appellants' contracts.

> "The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form part of it. This embraces those laws alike which affect its validity, construction, discharge and enforcement."
>
> *Walker vs. Whitehead,* 16 Wall. 314; 21 L. Ed. 357.
>
> *Edwards vs. Kearzey,* 96 U. S. 595; 24 L. Ed. 793.

> "The obligation of a contract is 'the law which binds the parties to perform their agreement.' *Sturges vs. Crowninshield,* 4 Wheat. 122, 197, 4 L. Ed. 529, 549, *Story, op. cit.,* 1378. This Court has said that 'the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incor-

> porated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement. . . . Nothing can be more material to the obligation than the means of enforcement. . . . The idea of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion'."
>
> *Home Building & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398; 78 L. Ed. 413.

We are not dealing, however, with a mere legislative gratuity or privilege conferred by Sec. 7 of Act 280 of 1916. We are dealing with a contractual relation existing between the corporation and the member, the law existing at the time of contract being an integral part of it.

Again, we do not deal with a mere shareholder of a Building & Loan Association who acquired his shares prior to the effective date of Act 140 of 1932. We must recognize that Appellants acted under the law of 1916, exercised the rights granted them by the by-laws and statute law; that appellants gave the legal and contractual notice of intention to withdraw as shareholders. There remained nothing further for them to do. Their rights had vested and had become fixed prior to Act 140 of 1932.

Appellants, upon the giving of the notice of intention to withdraw became vested in a property right—a cause of action. It did not arise upon the constitutional rule of law, but upon the contractual liability created under and in pursuance of the statute then in force.

*Coombes vs. Getz,* 285 U. S. 434; 76 L. Ed. 866.
*Ettor vs. Tacoma,* 288 U. S. 148; 57 L. Ed. 773.
*Pacific Mail SS. Co. vs. Joliffe,* 69 U. S. 540 (2 Wall.)

In the case of *Ettor vs. Tacoma,* the State of Washington had by statute imposed a liability on municipal corporations in favor of property owners sustaining consequential damages to their property as a result of street paving operations. While the statute was in force, suit was brought to recover damages inflicted upon an abutting property in consequence of street grading, done by direction of the City of Tacoma. While the suit was being heard, the statute creating the liability was repealed, and the trial Court directed a verdict in favor of the City, on the theory that the right of action was statutory, and fell with the statute, there being no saving clause. This judgment was affirmed by the State Supreme Court, but on writ of error to the United States Supreme Court, it was reversed, the Court saying:

> "The necessary effect of the repealing Act, as construed and applied by the Court below, was to deprive the plaintiffs in error of any remedy to enforce the fixed liability of the City to make compensation. This was to deprive the plaintiffs in error of a right which had vested before the repealing act,—a right which was in every sense a property right. Nothing remained to be done to complete the plaintiffs' right to compensation except the ascertainment of the amount of damage to their property. The right of the plaintiffs in error was fixed by the law in force when their property was damaged for public purposes, and the right so vested cannot be defeated by subsequent legislation."

In the case of *Coombes vs. Getz, supra,* there was presented a controversy wherein a creditor had brought suit against a director of a corporation, claiming liability by the director for a bill of goods which the creditor had sold to the corporation on open account. At the time the bill of goods was sold, there was a constitutional provision

in force in the State of California, which made directors of corporations liable in the event of a failure to pay corporate indebtedness by virtue of an embezzlement of corporate funds. In this case, the Supreme Court of California held, that the director was not liable, because the constitutional provision creating the liability had been repealed, before the suit of the creditor against the director was reduced to judgment. The United States Supreme Court held, however, that the directors, in taking their oath of office, impliedly accepted the obligations imposed by the constitutional provision of the California Constitution; and since the merchandise had been sold to the corporation while this rule of law was in full force and effect, a contract right in the provision of law was created, which it was incompetent for the State to repeal, and thus to impair the obligation of the creditor's contract.

In each of the two cases just cited, it was contended that the obligation claimed to have been impaired by the subsequent legislation was an obligation imposed by statute merely and subject to legislative repeal, and was not a contractual obligation.

Mr. Justice Sutherland in *Coombes vs. Getz, supra,* thus disposes of this contention:

> "The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not purely statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. **Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the pre-**

**viously vested right of the creditor, which in every sense was a property right."**

This Court in *Pacific Mail S.S. Co. vs. Joliffe,* 69 U. S. 450 (2 Wall) expressed the same thought in these words:

> "The claim of the plaintiff below for half-pilotage fee, resting upon a transaction regarded by the law as a quasi contract, there is no just ground for the position that it fell with the repeal of the statute under which the transaction was had. When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute. And such is the position of the claim of the plaintiff below in the present action; the pilotage services had been tendered by him, his claim to the compensation prescribed by the statute was then perfect, and the liability of the master or owner of the vessel had become fixed."

And it is so in cases at bar. The by-laws of the Association and the Louisiana statute then in force provided very definitely that the shareholder could withdraw his investment by giving notice, whereupon certain and definite quasi contractual obligations and property rights accrued and became fixed and vested, and there was nothing remaining to be done by the withdrawing shareholder.

**We submit, therefore, that not only did the Supreme Court of Louisiana rest its decision in these cases upon the proposition that contract obligations and property rights were involved, but analysis shows this proposition to be sound, that such contractual or quasi contractual obligations and property rights in fact existed.**

**What Obligations and Property Rights Existed?**

We are not concerned with every obligation of appellants' contracts. We are concerned with those obligations only which arise after appellants gave notice of intention to withdraw. No other obligations are involved. We do not discuss and it is unnecessary to pass upon the constitutionality of Act 140 of 1932 as to a shareholder who had not given the withdrawal notice.

The contract gave or permitted, let us say, the shareholder an option to withdraw. When he exercised the option, he had done everything the contract required of him; his rights had become fixed and absolutely vested. He had paid a valuable consideration for the exercise of this option. The withdrawing member gave up all future dividends or right to participate in future earnings; and this was the price he paid for exercising his option to withdraw. (See by-laws.)

Let us see what were the obligations of the contract and property rights after notice of withdrawal had been given.

1. The withdrawal value of the member's shares became fixed. The Association became obligated to pay him par plus unwithdrawn dividends less his proportion of losses accrued or contingent to time of notice of withdrawal.

2. Such withdrawal notice was listed with other withdrawal notices in the same order as received by the Association, and the Association became obligated to pay the same in that order.

3. When the withdrawing member reached the top of the withdrawal list the Association became obligated to pay him the withdrawal value of his shares before any other member should be paid. That is, the relative rights of members *inter sesse* were fixed.

4. When the ordinary allocations to withdrawals was insufficient to liquidate all of them within sixty days from date of notice, the Association became obligated to allocate to withdrawals 50% of net receipts, which obligation could be judicially enforced by the withdrawing member.

All of the rights we have enumerated are things the Association was obligated to do. These are true obligations and not mere remedies which do not affect substantially the obligation; and at the risk of tautology we quote the United States Supreme Court in the case of *Von Hoffman vs. Quincy*, 71 U. S. 535, 4 Wall. 535, 18 L. Ed. 403 at page 409.

> "It cannot be doubted, either upon principle or authority, that each of such laws passed by a State would impair the obligation of the contract, and the last mentioned not less than the first. Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligations to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of the contract 'is the law which binds the parties to perform their agreement.' *Sturges vs. Crowninshield*, 4 Wheat. 122. The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. In *Green vs. Biddle*, 8 Wheat. 84, it was said: 'The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms

by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. Upon this principle it is that if a creditor agree with his debtor to postpone the day of payment, or in any other way to change the terms of the contract, without the consent of the surety, the latter is discharged, although the change was for his advantage'."

## II.

**Does Act 140 of 1932 of Louisiana impair the contract obligation and take the property to which appellants were entitled?**

Appellants denounce as unconstitutional Sections 53, 54, 55 and 56 of the Louisiana Statute 140 of 1932, and we have reproduced these sections in appendix V, *et seq.* The Supreme Court of Louisiana in its opinion admits that appellant was deprived of an advantage and of a valuable right which he enjoyed.

Let us, however, advert to the said Sections 53, 54, 55 and 56 to discover if and to what extent obligations have been impaired and property taken by these sections.

**Contract Obligations.**

**Section 53:** This section permits of an infringement, upon one-half of net receipts, formerly required to be allocated to withdrawing shareholders, by the provisions of the 1916 Act, by providing that before any allocation of receipts is made to pay withdrawals, cash reserves may be created from which to declare dividends. Inasmuch as section 56 provides that such dividends may be in such amounts and at such rates as may be considered proper by the board of

directors, it is evident that the obligation to allocate 50% of net receipts to withdrawals may be very seriously impaired by this Section in the setting up of cash reserves to meet indefinite dividend requirements.

It is to be noticed as of importance here that the Act of 1932 guarantees none of these dividends to a withdrawing member; but to the contrary, section 53 and other sections provide that as to him, dividends cease as of the time of his notice of withdrawal.

**Section 54** destroys one of the most essential obligations under consideration. No longer is the Association obligated to pay the withdrawing member the withdrawal value of his shares upon his reaching the top of the list. The obligation has been impaired so that it becomes an obligation to pay 25% of such withdrawal value; whereupon such member goes to the foot of the withdrawal list, to again await *finding his way to the top of the list* (as the Statute puts it) when he may again be paid 25% and so on, until perhaps in some far off day he may receive what it was the Association's contract obligation to pay him at first.

Moreover, and as important, the obligation of the Association to pay the withdrawing member who reached the top of the withdrawal list the amount of the withdrawal value of his shares before the Association paid any other members, is totally destroyed under section 54. Under this section, members who apply for withdrawal long subsequent to a member who has reached the top of the list are acorded equal rank in the "stagger system" as we shall term it, of withdrawals set up by this section,—and this in addition to the fact that such members may have already received a large percentage of their investment in the shape of dividends paid to them as continuing members while the first

withdrawing member was denied any dividends as the penalty of his asking to withdraw.

**Section 55** undertakes to deny to withdrawing shareholders access to the Courts for any cause of action not accruing under Act 140 of 1932.

We do not conceive any possible justification for such an enactment; and the fact that the defendants did not seek to divest the Courts of jurisdiction herein is ample proof that not even they think such an enactment constitutional.

**Section 56** abolishes every obligation on the part of the Association to create any fund from which any withdrawals may be paid. Not only is the obligation to allocate 50% of net receipts to withdrawals completely abrogated; but it is provided:

> "Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares."

This section further provides that despite a withdrawal list 25% of gross receipts may be used to make new loans.

This section permits the declaration of dividends to continuing members, unlimited either as to amount or rate, despite the existence of a withdrawal list.

This section wipes out every vestige of obligation of the Association toward its withdrawing members which existed and was vested before Act 140 of 1932 became law.

This section delegates to the Boards of Directors of the various and sundry Building and Loan Associations the absolute power to enrich themselves as continuing members at the expense of the withdrawing member who prior to the enactment of the section paid valuably for the option to become a withdrawing member, and to bring into full existence those obligations of the Charter and By-Laws of his Association and the statute law then in force which we have enumerated.

**This statute emasculates the contract; it impairs every obligation in question; it divests every property right we have declared upon; it does do so without any condition and without offering any compensation.**

**As to the appellants in these cases, who prior to the effective date thereof, had exercised their privilege and thereby fixed the obligations of the Association toward themselves as withdrawing members, whose rights had become vested; —as to the appellants, such legislation clearly impairs contract obligations in violation of Section 10 of Article I of the Constitution of the United States.**

**Property Rights.**

The contentions advanced by appellants with respect to the "due process" clause of the Constitution arise out of the permissive and obligatory provisions to be found in sections 53 to 56 of the 1932 Act, and are these:

1. That these sections accord to the board of directors of the defendant corporations an unregulated discretion in

the accumulation of funds to be set aside and applied toward the discharge of withdrawal applications, thereby subjecting the appellants' property or investment in the defendant Associations and its recovery to a control and power never sanctioned or consented to by appellants; and that this control and power, if extended to the extreme possibilities permitted by the statute, would make it impossible ever to recover the monies invested in the defendant Association.

2. That, as of the effective date of Act 140 of 1932, appellants were possessed of a "property right" and a vested cause of action" to enforce by mandatory process the obligations imposed by the provisions of Section 7 or Act 280 of 1916 on the defendant Homesteads; that such "property rights" and "vested causes of action" were acquired for a valuable consideration and which consisted in the surender of any and all right to future participation in either the profits being made by the Association in part from the use of appellants' own monies, or in the management and control of the corporate enterprise, in which latter, as withdrawing shareholders, appellants had no voice.

3. That the complete abrogation of this "property right," "vested cause of action" (which ever it may variously be called) by the provisions of these sections of the 1932 statute, constitutes "a taking," whether for a "public purpose" or a "private benefit," and in either case violates the provisions of XIV Amendment of the Federal Constitution.

To constitute "a taking" of property, within the meaning of the 14th Amendment of the Federal Constitution, it is unnecessary that there be an out and out appropriation of the physical property.

In *Chicago, R. I. & P. R. Co. v. United States,* 284 U. S. 80, 96, 76 L. Ed. 177, 186, the Supreme Court said:

> "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title. *Chicago, M. & St. P. R. Co. v. Minnesota,* 134 U. S. 418, 458, 33 L. Ed. 970, 981, 3 Inters. Com. Rep. 209, 10 S. Ct. 462, 702; *Reagan v. Farmers' Loan & T. Co.,* 154 U. S. 362, 410, 412, 38 L. Ed. 1014, 1027, 1028, 4 Inters. Com. Rep. 560, 14 S. Ct. 1047; *Chicago, M. & St. P. R. Co. v. Wisconsin,* 238 U. S. 491, 498, 499, 59 L. ed. 1423, 1429, 1430, L. R. A. 1916A, 1133, P. U. R. 1915 D, 706, 35 S. Ct. 869. **The use of railroad property is subject to public regulation, but a regulation which is so arbitrary and unreasonable as to become an infringement upon the right of ownership constitutes a violation of the due process of law clause of the 5th Amendment.** *Atlantic Coast Line R. Co. v. North Carolina Corp. Commission,* 206 U. S. 1, 20; 51 L. ed. 933, 942, 27 S. Ct. 585, 11 Ann. Cas. 398."

As already pointed out, the Act of 1932 abolishes, in specific and unambiguous language, all obligation on the part of the Building & Loan Associations to set aside or allocate any definite segment of "receipts" from which withdrawing shareholder's investments may be discharged. Then, in what seems to have been an extra effort to insure the accomplishment of this purpose, the legislature leaves to the unregulated and uncontrolled discretion of the board of directors, not only the discharge of the duty or obligation, but the sole control, administration and the amount of funds

to be accumulated for the purpose. We quote the language of the statute:

> "Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded * * * ."

Nor is this all. By other provisions of the Act the board of directors are specifically authorized, despite the existence of a withdrawal list, to make new loans to as much as 25% of the "gross receipts"; to borrow money and thus create new corporate obligations superior to that of the withdrawing members; to pay dividends to continuing members to the amount of the entire earnings of the Association. (Sec. 56 of the Act.) The board is further authorized by Sec. 53, as follows:

> "Sec. 53 (par. 2) **Before** making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association, may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment of renewal of obligations, **and the creation of cash reserves needed for the declaration of dividends.**"

Nor is this all. These corporations, through their boards of directors are further authorized by section 13 of the Act to invest their "capital, or any part thereof" in Federal, State and Municipal bonds.

Considering the foregoing derogations from his rights, and bearing in mind other provisions of the Act which make inapplicable to these corporations the laws of receivership, other sections which deny to withdrawing members any right to interest, or to inspections of books and records or a cause of action, except to enforce the provisions of the statute, and there remains to the withdrawing shareholder but an empty title. **The law has completely stripped him of every vestige of remedy to enforce recovery, not of a mere inchoate or unliquidated claim, but of his own money; it completely abrogates every form of control which he had over his own funds invested in such institution, denying to him any and all share in the profits which those very funds helped to earn, and subjects even the recovery of them to an unregulated discretion of a board of directors that he cannot so much as help to choose. If this is not a "taking," then in the name of reason, what is?**

## III

### Does the State's Reserved or Police Power Save the Legislation from Unconstitutionality?

It is a principle of Constitutional law, to which we fully subscribe, that the State is sovereign, and can under its inherent or reserved attribute of sovereignty denominated "police power" legislate to protect the health, morals, safety and general welfare of its people, even to the extent of impairment of Constitutional prohibitions such as have been here invoked.

This Court has numerously and definitely applied this doctrine subject always to the equally important principal that "every exercise of the police power must be reasonable," and neither "arbitrary nor discriminatory".

This Court has in the case of *Home Building & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398, 78 L. ed., 413, again stated the principle, thus:

> "Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. **This principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them.**"

Freund, on Police Power, pages 60, 61 expresses this principle in these words:

> "Effective judicial limitations of the police power would be impossible, if the legislature were the sole judge of the necessity of the measures it enacted. The only question a Court could then ask in dealing with police legislation would be: does a condition exist which justifies any legislative action? But the maintenance of private rights under the requirements of the public welfare is a question of proportionateness of measures entirely. Liberty and property yield to the police power, but not to the point of destruction. . . . In reserving the conclusive determination of this issue to themselves, the Courts have firmly established the principle that **the duty of the reasonable exercise of the police power is a constitutional limitation on the legislature.** There are few forms of control that cannot become unreasonable by an excess of degree; and there are many cases where no other principle of limitation is discoverable than that of reasonableness. . . . The question of reasonable-

> ness usually resolves itself into this: is regulation carried to the point where it becomes prohibition, destruction or confiscation?"

In *Washington ex rel. Seattle Title Trust Co. vs. Roberge,* 278 U. S. 116, 73 L. Ed. 210, the Court held:

> "Legislatures may not under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities."

In *Nebbia vs. New York,* 291 U. S. 502, 78 L. Ed. 940, the Court again stated that whether to promote health, safety or general welfare, legislation which entrenches upon constitutional guarantees must be reasonable and not arbitrary or discriminatory.

The defendant Associations urged before the Supreme Court of Louisiana that Building and Loan Associations are businesses "impressed with a public interest," and that therefore the State can regulate them *in every detail;* that shareholders in such Associations have dedicated their investment to a public purpose and that they therefore insofar as such stockholders are concerned are without the pale of Constitutional protection.

We do not for a moment deny that Building and Loan Associations are subject to legislative regulation; we may even admit that they are affected with a public interest: for, after all, every business may be properly regulated, every industry is subject to reasonable exercise of the police power.

This Court has very recently again considered, clarified and restated the meaning of the phrases "affected with a public interest," "clothed with a public interest," "subject to a public interest," dedicated to a public interest" and

the like; and declared that none of these expressions denotes anything more than "subject to the exercise of the police power."

In the case of *Nebbia v. New York (Supra)*, the Court referring to *Munn v. Illinois*, 94 U. S. 113, 24 L. Ed. 77, said:

> "This court concluded the circumstances justified the legislation as an exercise of the governmental right to control the business in the public interest; that is, as an exercise of the police power. It is true that the court cited a statement from Lord Hale's *de Portibus Maris*, to the effect that when private property is 'affected with a public interest, it ceases to be *juris privati* only;' but the court proceeded at once to define what it understood by the expression, saying: 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large' (p. 126). **Thus understood, 'affected with a public interest' is the equivalent of 'subject to the exercise of the police power;' and it is plain that nothing more was intended by the expression.**"

and again:

> "It is clear that there is no closed class or category of businesses affected with a public interest, and **the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory.** *Charles Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 535, 67 L. ed. 1103, 1108, 43 S. Ct. 630, 27 A. L. R. 1280.

> The phrase 'affected with a public interest' can, in the nature of things, mean no more than an industry, for adequate reason, is subject to control for the public good."

The Court went on to say that under the police power the legislation must be reasonable and not be arbitrary, discriminatory, or an unnecessary interference with individual liberty.

In other words, businesses impressed with a public interest still have constitutional protection; the money invested in a Building and Loan Association (which once was considered the equivalent of funds deposited in a bank) is nevertheless property, and may not be taken without due process. Such businesses, and consequently such investments, may be regulated, but not arbitrarily and not with utter disregard for private rights.

Something more than a mere showing that the public has an interest in a measure or will benefit by it is required to justify the act as a proper exercise of the police power, especially when confronted by counteracting constitutional limitations intended for the protection of private rights. If this were not so, then the state would have it in its power to take from the miser the excess of his accumulated wealth, and distribute it among the more needy of its citizens—not by the power of taxation, which is an equal burden on us all, but by the more direct route of a "taking" under the police power. Happily for us all this is impossible under our system of government.

We do not seek nor have we the right to inquire into the wisdom or unwisdom of the legislation in question. That is the province alone of the Legislature; but we do inquire, and we have the right to do so, into whether or not there is a reasonable relation between the public welfare and the retroactive provisions of this Statute.

## IV.

**The legislation in question is unreasonable, unjust and discriminatory.**

The provisions of this Act as gleaned from the Act itself have no such relation to public welfare as to justify the destruction, in a retroactive manner, of the private rights of the appellants. The pertinent part of the title of the Act states its general purpose to be "**. . . to codify the laws of the State with respect to the Homestead and Building and Loan Associations, and to prescribe the rights, obligations and duties of said corporations and of the members thereof.**" Thus we see it is not an emergency measure, such as was justified in the rent regulation cases, or which justified the interference of the government in disputes between railroads and labor during war times.

The right to withdraw the money invested in shares of a Building and Loan Association is the essential difference between such associations and ordinary corporations. This right is of the genius of such associations. No where in the Act of 1932 does the Legislature undertake to declare it to be against public welfare that such withdrawals be permitted. On the contrary, the genius of the institution and the public welfare of Louisiana both require the right to withdraw.

**This Act of 1932 has, however left to withdrawing shareholders no means whatever to enforce their rights; this Act of 1932 has moreover placed it within the power of continuing members, unrestrained and unregulated by any judicial process, to use appellants' property indefinitely and without compensation.**

The Supreme Court of Louisiana has squarely faced the

problem. It has admitted that the Louisiana legislation in question deprives the appellants of valuable contract and property rights, but the majority opinion after lengthy citation of the Gold Clause cases declares that:

> "The constitutional prohibition against legislation 'impairing the obligation of contracts' does not protect contracts 'which deal with a subject which lies within the control of Congress' or the Legislature."

The propositions of law enunciated and applied in the Gold Clause cases are well established; and this Court, we submit, has in no wise departed in the Gold Clause cases from, but has emphasized, the fundamental principle that any attempted exercise of the reserved police power of the State, as it affects existing contract obligations and rights of property must bear a reasonable relation to a legitimate end, and must be reasonable and not arbitrary or capricious.

Pretermitting all other arguments, if the legislation in question does not bear reasonable relation to the public welfare, or is arbitrary or discriminatory, then if it impairs contract obligations or takes property without due process, it is unconstitutional.

*Worthen vs. Thomas,* 282 U. S. 426, 78 L. Ed. 1344.
*Home Bldg. & Loan Ass'n. vs. Blaisdell,* 290 U. S. 398, 78 L. Ed. 413.

The Supreme Court of Louisiana in the opinion has said that the legislation in question is not arbitrary or capricious and bears reasonable relation to a legitimate end.

**This is the crux of the entire case. If the Court be correct here, there can be but one conclusion. But with due**

**respect, we say that the Court has fallen into grievous error in its appreciation of the relationship between provisions of the sections of the Homestead law of 1932 under discussion and the object sought to be attained by the Legislature.**

The Court said (R. 36 and 45) that the object is

> "saving the building and loan associations from liquidation and of reviving their business, and of thereby benefiting all of the shareholders as a class, and the public generally."

**Assuming this to be the object sought to be attained, is there reasonable relation between that end and the provisions of the Act?**

Let us take section 54 which provides the "stagger system" of withdrawals. This section provides that when a withdrawing shareholder reaches the top of the list, instead of being paid in full, he is paid 25% and then goes to the foot of the list, to again come up and so on. There is *no reasonableness* whatever in these provisions of the Act with respect to saving the Associations from liquidation or reviving their business, because it is a very simple mathematical proposition that in a given space of time they will *pay out exactly the same amount* under the stagger system as they would if they paid 100% to each withdrawing member as he reached the top of the list.

No, may it please the Court, all that the stagger system of section 54 does is to take 75% of what was already vested in me and pay it to somebody else. No reasonable relationship here but arbitrary redistribution of wealth!

There never has been a decision of the Supreme Court of the United States that remotely suggests the constitutionality of a statute enacted under the guise of saving an industry from destruction,—the real and only possible purpose and effect of which is to destroy contract obligations and divest and take vested property rights in order that other private citizens may have, use and enjoy those rights.

When we examine sections 53 and 56 we find a more unreasonable and intolerable situation.

Instead of the provisions of the Act of 1916 and the contract between appellants and the Homestead Associations that at least 50% of net receipts must be allocated to the payment of withdrawals, these sections vest in the board of directors of each Association the absolute and unregulated discretion to allocate nothing whatever to payment of withdrawals and at the same time the uncontrolled and absolute discretion to set up and create reserves of every kind and to pay to continuing shareholders, including themselves, unlimited dividends and even to create cash reserves for future dividends!

**Now, it is to be borne in mind that no standard is fixed by the Legislature by which the discretion of the directors is to be regulated. The discretion is unregulated.**

**This is not exercise of police power by a Legislature, it is delegation of police power by the Legislature to a private board.**

Not only that! The Legislature by this very Act stamps with its approval the payment in full of withdrawals. In

fact, the opinion of the Supreme Court of Louisiana declares the object sought to be attained by the statute in question is the preservation of this institution, whose genius, whose distinguishing characteristic, differentiating it from every other type of corporation, is this right of the shareholder to be repaid his investment on demand.

Therefore, we may assert without fear of contradiction that the Legislature has not declared or determined that withdrawals should be prevented, curtailed or obstructed as inconsistent with public welfare. The Legislature has no where declared or provided that withdrawals should be regulated for any given time or under any set of circumstances.

The Legislature merely vests in a board of directors the absolute and unregulated discretion to prohibit all withdrawals indefinitely, by allocating nothing with which to pay them, and at the same time to continue to use the original money invested by the withdrawing shareholder without paying him any dividends whatever, and while paying to continuing members (which necessarily includes each director) whatever dividends the board may choose to declare.

**This legislation as contained in Sections 53 and 56 is unconstitutional because police power must be exercised by the sovereign through the law making body and cannot be delegated to private persons or private boards, especially unguided by any prescribed norm or standard, and more particularly when such private boards are possessed of rights and privileges which are augmented and furthered to the same degree as they by their actions derogate from the rights and privileges of others.**

This Court has at least twice declared unconstitutional such delegations of power.

In *Eubank v. Richmond,* 226 U. S. 137, 57 L. Ed. 156, the Court had before it a situation very similar to the instant case.

In that case an ordinance of the City of Richmond, Va., enacted under authority of a legislative act of that State, provided that whenever two-thirds of the property owners fronting on a street petitioned the Commission on Streets to fix the building line along the street, the Commission was required to fix said line within limits of 5 to 30 feet from the street line. Eubank, the plaintiff, had, before passage of the ordinance, obtained a permit to erect a dwelling and had ordered material for its construction, although actual building had not commenced, when he was notified that the bay-window of his proposed house projected over the line, thus fixed, by three feet. He was ordered to revise his plans accordingly. Suit was filed attacking the constitutionality of the statute and ordinance, on the ground that it operated to deprive him of property "without due process of law." The Supreme Court of Virginia upheld the statute and ordinance, but on writ of error to the United States Supreme Court, the action of the state court was reversed, the Court saying:

> "It (the statute and ordinance) leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots, and against the restriction they are impotent. This we emphasize. **One set of owners determines not only the extent**

> of use, but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience, or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciously. . . . The only discretion, we have seen, which exists in the street committee or in the committee of public safety, is in the location of the line between 5 and 30 feet. It is hard to understand how public comfort or convenience, much less public health can be promoted by a line which may be so variously disposed.
>
> "We are testing the ordinance by its extreme possibilities to show how in its tendency and instances it enables the convenience or purpose of one set of property owners to control the property right of others. . . . One person, having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is no such condition presented, we answer that there is control of the property of plaintiff in error by other owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance, and makes it, we think, an unreasonable exercise of the police power."

We submit the control granted to the board of directors of the defendant associations over the property and rights of appellants by the provisions of the 1932 Act are no less

offensive to the provisions of the Federal Constitution than in the Eubank case. They constitute a "taking", and are not justifiable under the "police power".

In the case of *Washington, ex rel Seattle Title Trust Co. v. Roberge,* 278 U. S. 116, 73 L. Ed. 210, the Court again applied this principle.

The City of Seattle in 1923 passed a comprehensive zoning ordinance dividing the city into six "use" districts, and provided that no building might be erected for any purpose other than that permitted in the district in which the site is located.

Since 1914 the Seattle Title Trust Co. as trustee owned and maintained in one of these "use" districts a philanthropic home for aged poor. The trustee purposed to replace the building with a larger and more modern building on the same site, which would have been in no sense a nuisance.

The site was in the "first residence district," where dwellings, schools, churches, banks, boarding houses, etc., were permitted. In 1925 an amendment to the ordinance provided that "a philanthropic home for children or old people shall be permitted in first residence district when the written consent shall have been obtained of the owners of two-thirds of the property within 400 feet of the building."

The trustee, when he was refused a permit without such written consent, resisted the ordinance as invalid, as repugnant to the due process clause.

The Court held the ordinance unconstitutional, saying:

> "The right of the trustee to devote its land to any legitimate use is property within the protection of the Constitution. The facts disclosed by the record make it clear that the exclusion of the new

home from the first district is not indispensable to the general zoning plan. **And there is no legislative determination that the proposed building and use would be inconsistent with public health, safety, morals or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance.** The section purports to give the owners of less than one-half the land within 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision or inaction of such owners. **There is no provision for review under the ordinance; their failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily, and may subject the trustee to their will or caprice.** *Yick Wo v. Hopkins,* 118 U. S. 356, 366, 368, 30 L. ed. 220, 225, 226, 6 Sup. Ct. Rep. 1064. The delegation of power so attempted is repugnant to the due process clause of the 14th Amendment. *Eubank v. Richmond,* 226 U.S. 137, 143, 57 L. ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914 B, 192; *Browning v. Hooper,* 269 U. S. 396, 70 L. ed. 330, 46 Sup. Ct. Rep. 141.

We earnestly submit that in Act 140 of 1932 there is no legislative determination that withdrawals by shareholders would be inconsistent with public welfare. Perhaps the legislature might have for a limited time forbidden withdrawals, or conditionally forbidden them during the continuance of certain conditions. But they did no such thing. They

permit, they sanction withdrawals, and so indicate plainly that they find the withdrawal of shares in harmony with the public interest.

After doing this, the legislature takes away all power of the Courts to compel allocation of any portion of net receipts to a fund to accomplish withdrawal; and moreover, in delegating the unregulated power to the numerous boards of directors of the Homesteads to determine the amount or segment of revenues, if any at all, to be allocated to withdrawals, the legislature has placed in the hands of continuing members of the Associations the power to use for their own aggrandisement the property and funds of withdrawing members without compensation and indefinitely.

Finally, upon this phase of the case, we would refer to the long line of decisions in which statutes of this sort, which have sought under the guise of police power to take property rights from, or to impair the contract obligations of, one person or class of persons for the benefit of another person or class of persons have repeatedly been held to be unconstitutional.

The Minnesota Moratorium case *(Home Building & Loan Ass'n. v. Blaisdell,* 290 U. S. 398) cites and discusses them all, from *Bronson v. Kinzie,* 1 Howard 311, on down to the present time; and points out that the protection of one class of persons at the expense of another class may only be justified as emergency legislation if reasonably conditioned. If the legislation is temporary and consideration is allowed for the temporary taking of property, the legislation may be constitutional.

## V.

**The statute in question cannot be justified as emergency legislation.**

It is finally submitted that the Louisiana statute cannot be justified as emergency legislation. The title to the Act indicates permanent codification, and the statute is in no way limited in operation to a definite term; nor does the Act contain any provision apposite to emergency relief.

This Court in two rather recent cases has carefully considered emergency legislation, and has enumerated clear principles with respect thereto.

In *Worthen vs. Thomas*, 292 U. S. 426, 78 L. Ed. 1344, this Court held unconstitutional a statute of Arkansas which, as emergency legislation, undertook to exempt from liability for debt the proceeds of any insurance policy inuring to a resident of Arkansas.

We quote from the body of the opinion in that case:

> "The Legislature sought to justify the exemption by reference to the emergency which was found to exist. **But the legislation was not limited to the emergency and set up no conditions apposite to emergency relief.**
>
> "We held in *Home Bldg. & L. Asso. v. Blaisdell, supra* (290 U. S. pp. 434, *et seq., ante*, 255, 54 S. Ct. 231, 88 A. L. R. 1481), that the constitutional prohibition against the impairment of the obligation of contracts did not make it impossible for the State in the exercise of its essential reserved power, to protect the vital interests of its people. The exercise of that reserved power has repeatedly been sustained by this Court as against a literalism in the construction of the contract clause which would

make it destructive of the public interest by depriving the State of its prerogative of self-protection. We held that this reserved protective power extended not only to legislation to safeguard the public health, public safety, and public morals, and to prevent injurious practices in business subject to legislative regulation, despite interference with existing contracts—an exercise of the State's necessary authority which has had frequent illustration—but also to those extraordinary conditions in which a public disaster calls for temporary relief. We said that the constitutional prohibition should not be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood, or earthquake, and that the State's protective power could not be said to be non-existent when the urgent public need demanding relief was produced by other and economic causes. **But we also held that this essential reserved power of the State must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. We held that when the exercise of the reserved power of the State, in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency.** This is but the application of the familiar principle that the relief afforded must have reasonable relation to the legitimate end to which the State is entitled to direct its legislation. Accordingly, in the Blaisdell Case we sustained the Minnesota mortgage moratorium law in the light of the temporary and conditional relief which the legislation granted. We found that relief to be reasonable, from the standpoint of both

mortgagor and mortgagee, and to be limited to the exigency to which the legislation was addressed.

"In the instant case, the relief sought to be afforded is neither temporary nor conditional. In placing insurance moneys beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances, or need. We find the legislation, as here applied, to be a clear violation of the constitutional restriction."

In the instant case, are appellants' rights only temporarily postponed; do we find the Act limited as to duration? We not only do not, but we find that the statute purports to codify in a permanent fashion. Does the Act condition the derogation of appellants' rights so as to make it reasonable and fair instead of arbitrary and unjust? It not only does not, but the statute in forbidding the Association to pay dividends to withdrawing members, takes away a power the Association might have exercised to ameliorate the situation which the 1932 statute created.

## CONCLUSION

We again suggest that legislation may be constitutional in its prospective application, and unconstitutional as applied retroactively to existing contract obligations and vested rights. We seek to have unconstitutionality declared only as the Act of 1932 applies to appellants.

We submit that the sections of Act 140 of 1932 denounced by us impair the essential obligations of a contract between appellants and the associations, and which obligations became fixed, vested and mandatory when appellants gave notice of withdrawal; that such legislation impaired appellants' contract rights and divested their property without due process.

We do not dispute that the business of Building and Loan Associations may be regulated under the State's reserved police power, but we insist that all such regulation when it affects contract obligations and property rights must be reasonable—the regulation must be such as has reasonable relation to the legitimate end in view; must be in harmony with the fair intent of the constitutional limitation.

None such here! But arbitrary impairment of contract and divesture of property rights without process; unjust discrimination against one shareholder in favor of other shareholders. No temporary moratorium as in Minnesota, nor fixing for a limited time of prices as in the Nebbia case; but permanent, retroactive, confiscatory and discriminatory legislation which has not been and cannot be justified.

It is submitted that the decree of the Supreme Court of Louisiana appealed from should be reversed, and sections 53, 54, 55 and 56 of Act 140 of 1932 of Louisiana declared unconstitutional, and the decree of the Lousiana District Court reinstated.

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## APPENDIX

### BY-LAWS.

**1. Acme Homestead Association** (Record 287, page 18.)

Section 6. Withdrawals.—Full Paid Stock may be withdrawn at any time, by giving notice, in writing, to the Association through its Secretary, which notice shall be registered by him in order received, and in the same manner as notices for withdrawals of Installment shares, and shall be paid for in the order received, out of any unappropriated money in the treasury; provided that not more than one-half of the monthly receipts of the Association shall be used in the payment of withdrawals. Dividends shall cease from the date of the Notice of withdrawal. The Shareholder shall receive the face value of the stock, together with all dividends declared thereon, which shall not have been previously withdrawn, less a pro-rata share of losses, if any, in excess of the amount in the Contingent fund of the Association.

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**2. Thrift Homestead Association** (Record 288, page 18.)

(4) Shareholders shall have the right to withdraw from the association the amount paid in, together with the actual proportion of loss, if any, upon filing written notice of withdrawal, which shall be registered in the order received, and such withdrawals shall be paid in the order registered, but said association shall not be compelled to devote more than one-half the monthly receipts for the purpose of paying withdrawals, but the board may, in its discretion, use more than one-half the monthly receipts for the purpose of paying the matured or withdrawn shares.

**3. Conservative Homestead Association** (Record 289, page 18.)

*Charter, Art. IV:*

Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than one-half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate.

*By-Laws, Sec. IV:*

Paid-Up Shares.—Paid-up shares may be issued by the President upon payment of same in full, in cash, at the time of issuance. This stock shall begin to draw dividends from the date of issue.

Paid-up stock shall be issued subject to the following terms and conditions:

1. Dividends are payable in cash semi-annually.

2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of withdrawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in pay-

ment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association.

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**4. Union Homestead Association** (Record 290, page 18.)

4. Members not indebted to the Association may withdraw all or any part of the cash value of their unpledged shares by giving notice in writing, and the liability to pay dues and the right to participation in profits shall cease with the notice. If the withdrawal be total, the member shall receive all installments paid, and all dividends credited thereto, less any unpaid charges and a pro rata share of the losses, if any, in excess of the amount in the contingent loss fund. Members making partial withdrawals shall forfeit all share in the earnings since the last dividend on the amount so withdrawn. Notices of withdrawal shall be registered and numbered in the order of their filing, and shall be liquidated in rotation as registered upon the return of the certificate of stock and pass book if the withdrawal be total, or on the giving of proper receipt if the withdrawal be partial, out of the first unappropriated money in the treasury; provided that not more than one-half of the monthly receipts shall ever be used for the liquidation of withdrawn or matured stock unless there should be an accumulation of funds that cannot be loaned in the ordinary course of business.

Full paid and matured shares may be withdrawn in the same manner as installment shares, but no fractional parts of shares can be withdrawn.

**Section 7 of Act 120 of 1902** (Louisiana Laws 1902, page 195) **as amended by Act 280 of 1916** (Louisiana Laws 1916, page 568).

"Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid." * * *

**Act 140 of 1932 (Louisiana Laws 1932, page 454). (Sections 53, 54, 55 and 56).**

"**Section 53.** Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefor are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement

of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"**Section 54.** Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawal shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire inter-

est in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"**Section 55.** A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any condi-

tions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"**Section 56.** The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1935

## Nos. 287, 288, 289, 290 and 316

No. 287 CAMILLE V. TREIGLE, Appellant, v. ACME HOMESTEAD ASSOCIATION, Appellee.

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No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

Appeals from the Supreme Court of Louisiana.

## BRIEF ON BEHALF OF APPELLEES.

DELVAILLE H. THEARD,
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HARRY EMMET McENERNY,
AZZO J. PLOUGH,
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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1935

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Appeals from the Supreme Court of Louisiana.

## BRIEF ON BEHALF OF APPELLEES.

### PRELIMINARY STATEMENT.

The present petitioner and those in the related suits attack certain sections (53, 54, 55 and 56) of Act 140 of 1932 of the Louisiana Building and Loan Code, on the ground of impairment of contract and deprivation of property without due process of law.

They claim that the Louisiana building and loan statute of 1902 as amended in 1916, under and in accord-

ance with which they possess their shares, has been substantially changed by the Louisiana Legislature, involving unconstitutional contract impairment and lack of due process.

## STATEMENT OF POINTS.

The defendant building and loan associations (generally known as homesteads, in Louisiana), admit that substantial changes have been made in the prerogatives of building and loan shareholders but justify these modifications on the following grounds:

1. Building and loan associations, as quasi-public institutions, like savings banks and insurance companies, are subject to the complete control and regulation of the Legislature in the exercise of the police power. The relationship between building and loan associations and their members is entered into subject to the future exercise of the police power of the State by the enactment of wholesome and reasonable laws for the common good.

2. From the fact that the business of building and loan associations is of a public character and therefore subject to regulation and control by the Legislature in the exercise of the police power, it must follow that the authority of the Legislature in that respect cannot be frustrated or forestalled by the making of private contracts with building and loan associations. Accordingly, individuals who acquire shares in building and loan associations know in advance, or are charged with knowledge, that their rights which result from their membership in such associations are conferred and controlled by statute and are therefore subject to impairment at any time by an Act of the Legislature.

3. The changes made by Act 140 of 1932 constituted a reasonable and proper exercise of the police power. In any event, the legislation here under consideration is not arbitrary or capricious, but bears a reasonable relation to a legitimate end. The Legislature is entitled to its own judgment in exercising control over quasi-public corporations and their shareholders, and Courts are not concerned with the wisdom of such legislation.

4. The relationship between a building and loan shareholder and his association is not a conventional or consensual agreement, but is a status created by law, in respect of a membership in a corporation affected with a public interest, and which can be changed at the will of the Legislature. This status, thus created by, and existing only because of, a statute, is at all times within the control of the Legislature, and may at any time be altered by the Act of the Legislature in the exercise of the police power.

The right of withdrawal from such an association cannot survive the statute upon which it is founded, but must fall with it, since its existence depends upon the enabling statute, and it can have no independent existence arising from the consent of the parties or the meeting of the minds.

The Legislature, therefore, may change the method of withdrawing funds from a building and loan association. It is an exercise of the police power in respect of an institution, quasi-public in character, profoundly affected with a public interest, and subject to regulation in the discretion of the Legislature.

## BUILDING AND LOAN STATISTICS.

The importance and magnitude of the interests represented by the building and loan associations of this country should not be overlooked, and mention should also be made of the fact that these associations, inaugurated in the United States more than one hundred years ago, have constituted the most wide-spread influence for thrift and home-ownership in this country. As appears from the statistics in the answer of the Acme Homestead Association in this cause (R. pages 13 and 14), in Louisiana, at the close of the year 1930, (which was the last available date at the time when this case and the other related cases were put at issue in the lower court) there were 102 building and loan associations with a membership of 200,930, and assets totalling $182,358,292.00. In the United States, including Hawaii, the total number of building and loan associations was 11,777, with a total membership of 12,350,928, and total assets of $8,828,611,925.00. The building and loan associations in Louisiana, at the close of the year 1930, owned mortgage loans totalling $161,525,736.00, invested almost exclusively in homes of thrifty families, and representing, along with savings banks, the greatest factor for the promotion of thrift and good citizenship in the State.

In his report to the 1934 Convention of the United States Building and Loan League, held in the City of New Orleans in 1934, H. F. Cellarius, Secretary-Treasurer, furnished the following compilations, all based on data furnished for 1933 by the respective State Supervising Departments, to-wit: **Table 1,** Summary Table of Number of Building and Loan Associations, Total Membership, and

Total Assets of Associations, by States, for the year 1933; and **Table 2,** Mortgage Investments of Building and Loan Associations for the years 1932-1933.

These Tables are reproduced in the Appendix, Page 1.

The figures, compiled as stated from the official reports of the State Supervisors of Building and Loan Associations in various States, are given in detail in the Building and Loan Annals for the year 1934, published by the United States Building and Loan League, 104 South Michigan Avenue, Chicago, Morton Bodfish, Executive Vice-President. The figures for the year 1934, and to be published in 1935, are not as yet available; they do not materially differ from the figures for the year 1933, and published in 1934, and above reproduced.

The 1933 figures show that 9,224,105 individuals were interested in 10,727 associations and that their total investment amounted to $6,977,531,676—this surely representing a business of tremendous importance and justifying the public interest which the Legislature in every state has made the basis of the widespread regulation and control of these Associations.

**Point 1.**

**Building and loan associations, like banks and insurance companies, are affected with a public interest and are subject to the police power. Building and loan associations, being subject to the police power, may be regulated and controlled to the minutest detail and in every respect, by legislative action.**

There is no doubt of the fact that building and loan associations are quasi-public institutions, subject to regulation and control. Appellants concede this. (See opponents' brief, p. 29).

This Court has so held. See *Hopkins, Reliance and Northern Building and Loan Association cases, Nos. 55, 56 and 57*, October term, 1935, decided December 9, 1935.

The public character of these institutions has been definitely settled in Louisiana for nearly fifty years.

Under Act 151 of 1888 of Louisiana (see Appendix, p. 5) these associations are declared to be "corporations for the promotion of public utility and advantage". And this statute (Act 151 of 1888) was recognized as being in full force and effect, in Section 81 of the Louisiana Homestead and Building and Loan Statute (Act 140 of 1932). See Appendix, p. 5.

The quasi-public character of these institutions has been uniformly stated and applied in all the decisions in Louisiana. *First National Bank v. Louisiana Tax Commission, 175 La. 119, 131.* (Same case, *289 U. S. 60*); *Mayre v. Pierson, 171 La. 1077, 1084; Succession of D'Anna,*

*6 La. App. 142, 143; State ex rel. Cotonio v. Italo-American Homestead Association, 177 La. 766, 771, 772; Trascher v. Mohawk Homestead Association, 178 La. 213, 215.*

Building and loan associations in Louisiana have been placed under the supervision of a constitutional officer,—the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations (Section 18, Article 6, Louisiana Constitution, 1921; see Appendix, p. 6).

The public character of these institutions was emphasized in the decision of this Court, of December 9, 1935, in the *Hopkins, Reliance and Northern Building and Loan Association cases, supra:*

> "A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi-public, though for other purposes of classification the corporation is described as private. Dartmouth College v. Woodward, 4 Wheat. 518, 668-672. Cf. the statutes and decisions collected by Brandeis, J. in Liggett Co. v. Lee, 288 U. S. 517, 548, et seq. This is true of building and loan associations in Wisconsin and in other states. They have been given corporate capacity in the belief that their creation will advance the common weal. The state, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. They are more than business corporations. **They have been organized and nurtured as quasi-public instruments.** Louisville Gas & Electric Co. v. Coleman, supra. They may not divest themselves of a franchise when once it is accepted if the local statutes or decisions command them to retain it. See opinion of the court below, and cf. Thomas v.

West Jersey R. Co., 101 U. S. 71; Central Transportation Co. v. Pullman's Car Co., 139 U. S. 24. **How they shall be formed, how maintained and supervised, and how and when dissolved, are matters of governmental policy, * * *."**

In *Louisville Gas and Electric Company v. Coleman, 277 U. S. 32, 40,* this Court, in passing upon a Kentucky statute providing for a tax to be paid in connection with the recordation of mortgages, condemned the statute in respect of the attempted classification depending upon the time of maturity of the obligation, but approved the exemption provided in respect of mortgages recorded in favor of building and loan associations; and said:

> "The exemption of building and loan associations from the operation of the tax is a different matter. The equal protection clause of the 14th Amendment does not preclude a state in imposing taxes from making exemptions. . . . It may exempt the property of churches, charitable institutions, and the like; and it does not admit of fair doubt that, under the circumstances disclosed by the opinion of the court below (Louisville Gas and Electric Co. v. Shanks, 213 Ky. 762) in the Middendorf case (Middendorf v. Goodale, 202 Ky. 118), it has lawfully exempted building and loan associations. That court points out that a building and loan association under the Kentucky statutes must receive payment from members only and make loans to members only, in pursuance of a plan set forth. Money accumulated is to be loaned to members according to a rule of priority. **The essential principle of such an association is mutuality.** The purpose of the statute, the court below says, was **to provide the members of the associations with the means of borrowing money for the acquisition of homes, in recognition of the duty of the state to encourage**

> **the acquisition of homes by its citizens.** Such associations are also placed by the state statute in a separate class for purposes of ad valorem taxation. It is made clear by the lower court that the **purpose of the exemption was to enable these associations, by relieving them of a burden, more completely to carry out the quasi public purpose which** the legislature designed in providing for their creation. This exemption, therefore, must be upheld. . . ."

See also *Union Savings and Investment Co. v. District Court, 44 Utah 397, 404; State v. Court of Common Pleas, 124 Ohio State 269, 275; McConville v. Fort Pierce Bank and Trust Co., 101 Fla. 727; Engel v. O'Malley, 219 U. S. 128, 136; Bank of Oxford v. Love, 250 U. S. 603, 606; Divide County v. Baird, 55 North Dakota 45, 50; Munn v. Illinois, 94 U. S. 113, 124; Spring Valley Water Works v. Schottler, 110 U. S. 347, 354; People v. Budd, 143 U. S. 517, 534; Noble State Bank v. Haskell, 219 U. S. 104, 111; German Alliance Co. v. Lewis, 233 U. S. 389, 414; Van Dycke v. Geary, 244 U. S. 39, 47; Block v. Hirsch, 256 U. S. 135, 155.*

**Point 2.**

Since building and loan associations, like banks and insurance companies, are quasi-public institutions, the rights of their shareholders may be altered and modified in the course of the control of these Associations by the State in the exercise of its police power; and **for many years it has accordingly been the settled law of this country, that the Legislature in the public interest may enact statutes regulating banks, building and loan associations and insurance companies, in the interest of the public and of the general welfare of the State, although incidentally the private rights of said associations and of their members must be correspondingly altered and modified.**

Such changes are in no manner a violation of the constitutional rights of the members, for the reason that it is the settled doctrine in the constitutional law of this country, that the exercise of the police power, within its proper sphere, cannot be impeded by constitutional guarantees; and that, when the Legislature has undertaken to regulate a business affected with a public interest, this exercise by the State of its basic police power in the interest of the common weal can not be arrested by the claim of individual contract or property rights. This basic principle of Constitutional law, which is trite in respect of banks, public utilities, carriers and insurance companies, equally applies to building and loan associations, which are to an equal extent quasi-public institutions.

And the cases definitely hold that, when private individuals acquire rights, by contract or otherwise, in such quasi-public institutions, subject to legislative regulation

and control, such individuals can not claim any constitutional privileges against the impairment of their relationships or their contracts by the subsequent enactment of regulatory legislation affecting such institutions through the proper exercise of the police power. And this doctrine is inevitable and inherent in the nature of these institutions and necessarily results from their character. For it cannot be denied that if their contracts or shareholder relationships were free from control or interference by the Legislature, the entire business could be put beyond the control of government regulation, by the simple expedient of making creditor or shareholder contracts.

**A recent important *nisi prius* case in New Jersey, now final, presents** the identical question arising in the present litigation, in relation to the **right of the State, by a subsequent enactment, to alter the withdrawal rights of members in a building and loan association.**

The New Jersey court held, that the matter of withdrawals was always within the control of the Legislature under the police power, and that the withdrawal rights of a shareholder, acquired under a pre-existing statute, could be altered in the discretion of the Legislature, in the course of the regulation of the quasi-public and government controlled institution, without the impairment of any constitutional rights.

*Fornataro v. Atlantic Coast Building and Loan Association (Supreme Court of New Jersey), 10 N. J., Misc., 1248:*

"Plaintiffs became members of defendant association prior to the building loan act as amended

in 1932 and during the time that building and loan associations were regulated by the Act of 1925.

It will also be noticed that the withdrawal notices were given prior to the time when the amendment of 1932 became effective. . . .

**Plaintiffs contend that under the Act of 1925, they had certain vested rights as withdrawing members and that those rights may not be taken away by a retrospective construction of the 1932 amendment.**

**Plaintiffs contend that to so construe the amendment would violate their rights under Article IV, Section 7, paragraph 3, of the Constitution of this State and also Article 1, Section 10 of the Constitution of the United States.**

**What were plaintiff's contractual rights?**

**Any right of withdrawal they had was merely a privilege granted to them by the legislature and such a privilege was in fact granted.**

**That plaintiff's privilege of withdrawal was conferred by statute is apparent. . . .**

**From that time on, every purchaser of shares in a building and loan association was given notice that he had a right of withdrawal and that the Legislature had fixed the manner of payment and that while building and loan associations could make the same provisions by its by-laws, there was no power so to do if the provisions of the by-laws limited or attempted to transcend those of the Legislative Acts.**

**The result was that when plaintiffs became shareholders they knew that the Legislature had legislated as to withdrawals and that it had reserved the right and power to further legislate and that their rights with respect to withdrawals were derived from Statute and not by way of contract arising out of by-law regulations. . . .**

**It seems to me that the Legislative intent is apparent and that no vested rights of plaintiffs are violated by giving to the 1932 amendment a retrospective construction.**

What the Legislature did by the Amendment of 1932, it seems to me, was to bolster up the ultimate result, i. e., assured, more nearly, that there would be an ultimate payment of withdrawals without jeopardizing the very life of the association and thereby secured to the member the payment of his withdrawal in such manner that the payment thereof might not destroy mutuality and equal participation in assets and losses. . . .

> 'These decisions, few from many, to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state.'

**The court will take judicial notice of the stress of the financial situation existing at the time the amendment of 1932 was acted upon and with that crisis in the financial World and Nation in view, there can be no doubt that in the exercise of its reserved power, the Legislature was acting for the welfare of all investors in building and loan.** Many of our financial institutions had closed their doors, a panic stricken people had created runs on banks and these institutions had not been able to continue in business, not because, in many instances, they did not have sufficient assets to pay, but because their assets were frozen. Fortunately, building and loan associations had, in the main, weathered the storm, but, even a limited knowledge of the character of their investments, the great number of foreclosures and consequent taking over of real estate, makes it apparent that they could not meet all the demands of this panicky public if

they were to be compelled to continue under the Act of 1925; so that, in the enactment of the 1932 Amendment, **the Legislature came well within the rule as laid down by Mr. Justice Holmes in Noble State Bank v. Haskell, 219 U. S. 104, wherein he said that**

**'Police power extends to all great public needs.' "**

In the case of *Holland v. Nakdimen*, the Legislature of Arkansas, in the exercise of its right to control the relationship between banks and their depositors, enacted a statute prescribing a maximum rate of interest to be allowed on deposits, and this was held to be a proper exercise of the power to regulate these quasi-public institutions. And, as it is manifest that no contract entered into in advance can control the Legislature in the exercise of its regulatory rights over such institutions, the decision holds that this statute not only operated to control future deposits, but applied to a previously existing contract by which the bank had agreed to allow a higher rate of interest to one of its depositors.

*Holland v. Nakdimen, 177 Arkansas 920:*

**"Finally, it is insisted that the act under consideration went into effect March 7, 1927, and that in so far as the plaintiff, Mrs. C. C. Scott, is concerned, it would violate a contract which the bank had previously made with her to pay her 4½ per cent. on time deposits until June 30, 1927. WHEN MRS. SCOTT AND THE BANK MADE THIS CONTRACT, THEY KNEW THAT THE REGULATION AND CONTROL OF BANKS CAME UNDER THE INTERNAL POLICE POWER OF THE STATE, AND THAT THIS CONTRACT**

**MUST BE SUBJECT TO ALL LAWS THEN IN FORCE OR WHICH MIGHT THEREAFTER BE PASSED."**

Such a decision is direct authority for the proposition, that no shareholder in a building and loan association can complain of a statute which affects his rights by providing, by the enactment by the Legislature, under the police power, of a new statutory rule, for a new system of withdrawals from such association.

The Supreme Court of Louisiana, in deciding the present cases, applied exactly the same principle.

See *Manigault v. Springs, 199 U. S. 473, 480; Union Dry Goods Co. v. Georgia Public Service, 248 U. S. 372, 377; Atlantic Coast Line v. Goldsboro, 232 U. S. 549; Sutter Butte Canal Co. v. Railroad Commission, 279 U. S. 125; Guilford Water Co.'s Services Rate, 118 Maine 367; Erie R. Co. v. Public Utility Commissioners, 89 N. J. Law 57.*

In *Dillingham v. McLaughlin, 264 U. S. 370,* some individuals operating as a common law trust conducted a home building, thrift and savings business, and had received deposits under certificates which constituted valid and legal contracts under the laws of the State of New York. By a subsequent enactment, the Legislature provided that such businesses must be incorporated and classified with banks and building and loan associations, and must be subjected to the regulations applicable to such businesses. And on a consideration of this matter this Court specifically held, that this new enactment would apply to all existing contracts in the existing business, since the new statute was an

exercise by the Legislature of the police power in a field undoubtedly within its proper sphere; it being the holding of this Court, in further confirmation of the settled law on that subject, that no constitutional guarantee could prevail to arrest the operation of a regulatory statute in that quasi-banking business, although the pre-existing rights of contracting parties would, of necessity, be substantially affected and might, indeed, be wholly destroyed.

As to the existing contracts the Court said:

> **"The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future."**

In the leading case, *Louisville and Nashville v. Mottley, 219 U. S. 467*, the Court held that a contract valid when made (in 1871) for the giving of a free pass by an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after Congress had passed the Act of June 29, 1906.

The Court said:

> "It may be suggested that a refusal to enforce the agreement of 1871 will operate as a great hardship upon the defendants in error. **But that consideration cannot control the determination of this controversy. . . . The Court cannot mold a statute to meet its views of justice in a particular case.** . . . It is said, however, that, as the contract of Mottley and wife was originally valid, it cannot be supposed that Congress intended by the Act of 1906 to annul or prevent its performance. . . . **Assuming that the agreement of 1871 was valid when made, could Congress, by any statute subsequently enacted, make its enforcement by suit impossible?**

> **. . . Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority. These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power . . . as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable. . . . There can, in the nature of things, be no vested right in an existing law which precludes its change or repeal, nor vested right in the omission to legislate upon a particular subject-matter which exempts a contract from the effect of subsequent legislation** upon its subject-matter by competent legislative authority. . . . If the legislature had no power to alter its police laws when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable."

Two decisions of the Supreme Court of Massachusetts *(Opinions of the Justices, 278 Mass. 607, 611,* and *278 Mass. 613, 616)* decreed in a very carefully prepared opinion, that building and loan associations and banks must conform to a statute requiring them to become members of a Cooperative Central Bank and to centralize their reserve funds in this cooperative institution. Obviously, this measure affected substantially the status and rights of the shareholders in every institution in the State, as shareholders of

individual associations were compelled, to an extent, to pool their resources with all the other similar associations in Massachusetts; and this innovation was vigorously resisted as unconstitutional. But the Court held that the relations between savings banks and their depositors had been entered into subject to the future proper exercise of the police power by the enactment of laws for the common good and that the new statute compelling individual associations to pool a proportion of their separate and individual reserve funds, was valid although the rights of shareholders would be affected.

A very important case, in one of the most important building and loan states, was recently decided by the Supreme Court of Ohio. The Massillion Building and Loan Association had made a contract, under which it had given to certain brokers the exclusive right to sell to the public twenty thousand shares of the capital stock of said Association. The contract was an important one, involving more than Eighty Thousand Dollars in potential profit to the brokers. The contract was entirely beneficial to the Association also, which collected on each sale a net amount in excess of the par value of its shares. The contract, when made, was, in every respect, legal and binding under the laws of the State of Ohio.

The Banking Commissioner of Ohio, however, did not approve the policy underlying the sales of shares made under this contract. There was, however, no law to which resort could be had in order to prevent the Association and the brokers from going on with the execution of this contract. As a matter of fact, the contract had been to a sub-

stantial extent already executed, and, in every sense of the word, contract and property rights had vested in the parties, subject to the protection of all State and Federal constitutional guarantees.

At the suggestion and on the recommendation of the Banking Commissioner, the Legislature of Ohio enacted a law providing that all building and loan shares must be sold, by the associations respectively, directly to the public and "over the counter." This statute, in terms, was made retroactive, and all existing agreements in derogation thereof were declared to be illegal and null under the reserve police power and the right of the State of Ohio to control the operations and relationships of its building and loan associations. An excerpt from that decision is now quoted:

*State ex rel. Crabbe, Atty. Gen., v. Massillion Savings & Loan Co., 110 Ohio St. 320:*

> **" 'By virtue of its police power, the state may regulate building and loan associations. * * * In the exercise of this power, various statutes have been passed relating, among other things, to the incorporation of such societies, to their powers.'** etc., 9 Corpus Juris, 923. In this case the state seeks **to oust the building and loan company from its claimed right or franchise to sell its stock and memberships in contravention of the statute, after July 3, 1923.** It is not our purpose to decide what the effect of this contract may be as between the parties themselves, especially as it has been suggested in argument that this feature has been adjudicated in another case. We are not advised by the record to what extent the contract between the building and loan company and the finance company had been

executed by actual sales of stock and memberships prior to the filing of this petition in *quo warranto*. The petition merely asks **for an ouster in the future from the claimed privilege of selling the same in accordance with the agreement.** Therefore it is manifest that, while the **petition attacks the contract entered into prior to the effective date of the amended act, and asks the judgment of ouster from further proceedings under that contract,** it is not sought to impair a completed contractual obligation, but **to curtail a subsequent exercise of a franchise by preventing future sales.** Undoubtedly this association itself could not enter into such a contract after July 2, 1923, and, in our opinion, **it cannot foreclose the right of the state to exercise thereafter its police power by entering into such contract prior to the date of the amended act."**

Since building and loan associations are subject to regulation under the police power, their creditor—and shareholder—relationships are subject to control, as otherwise all power of State regulation and control would be frustrated by any pre-existing contracts, outstanding stock certificates, or other current undertakings, of said institutions. It is for that reason that the cases hold uniformly that the power of regulation or control over these institutions cannot be arrested or weakened or limited by the pre-existing contracts or shareholder relationships of these quasi-public corporations.

Accordingly, persons who make contracts with, or who subscribe to shares in building and loan associations are charged in advance with knowledge of the character of these institutions and of the regulatory rights of the Legislature in their behalf, and such shareholders cannot validly complain when the Legislature at a later date exercises its

right of control and regulation over them and effects structural and other changes which affect the pre-existing prerogatives and rights of these shareholders and members.

Opponents' argument seems to be that since they made an application for withdrawal, the Legislature must abrogate, so far as their applications were concerned, all power of regulation. In other words, opponents say that they had done all that had been expected of them, and that from that instant they enjoyed what they characterize as a vested right, free from the control of the Legislature under the police power. That proposition seems to answer itself.

When a business is subject to legislative control, it is at all times subject to that control.

**Point 3.**

**The changes, of which opponents complain, are a valid exercise of the police power, not arbitrary or discriminatory, and in every respect valid and legal.**

Plaintiffs complain principally of the following new provisions in the 1932 Louisiana Statute,—the change in the method and time of withdrawal, the discretionary control of directors as to the use of funds for dividends, the payment of dividends to continuing members although there are unpaid withdrawals.

Since building and loan associations are wholly subject to the police power, we have seen that the Legislature has the absolute power to control them and to legislate about them, provided only the new statutory provisions

have a substantial relation to a proper purpose, and are not capricious, arbitrary or discriminatory.

With the wisdom of such legislation and the soundness of the economic policy involved, the Courts are not concerned.

It must be noted that Act 140 of 1932 is definitely and absolutely an exercise by the State of its police power. The Louisiana Legislature so declared in unmistakable terms (See Section 80, Act 140 of 1932, in Appendix, p. 6).

It had developed in Louisiana as in many other States that the existing statutes for paying withdrawals in order of application worked unsatisfactorily.

In the case now before the Court, the Supreme Court of Louisiana has fully stated the conditions, of which the Court took judicial notice, which made reasonable and proper the enactment of Act 140 of 1932.

> "The purpose of the Act of 1932 was not to favor any member or class of members to the prejudice of another member or class of members of a building and loan association, but to benefit indiscriminately all members of such associations and the general public, by saving these institutions from dissolution, which they were menaced with, by the financial depression. During normal times when the Act of 1916 was adopted, and until the financial panic set in, building and loan associations received substantial sums on their stock subscriptions and made prompt collections of interest and principal on their loans, and were able to pay withdrawals

promptly, if not on demand. But when the depression came on, with its resultant condition of unemployment and the consequent need of money for household expenses, there were no funds available for investment in the shares of building and loan associations, and very little for the payment of debts due to them, or for the payment of interest on the loans they had made. The demands for withdrawals became overwhelming, and whenever a large claim came to the top of the list it blocked indefinitely the small claims of those who were more in need of their money. The result was, by the time the Act of 1932 was drafted and submitted to the Legislature by the State Bank Commissioner, that the business of building and loan associations was stagnant, not only in Louisiana but throughout the whole United States." (Record 287, p. 36).

It cannot be said that, in the face of this statement of the Supreme Court of Louisiana, there was no basis on which the Legislature was authorized to act. Surely, these facts being known to the members of the Louisiana Legislature, it cannot be contended that the statute which they passed "sounded in folly", and that there was no reasonable basis on which they could act. Nor, under the circumstances, can it be urged that the legislation now under consideration had no reasonable relation to the end to be attained.

It must be remembered that we are here dealing with a matter entirely within the control of the Legislature and that the judgment of our opponents or of the Court cannot be substituted for that of the Legislature, if there was and is any conceivable factual basis which can be fairly suggested to justify the measures adopted by the Legislature.

The jurisprudence of this Court, particularly in recent cases, has emphasized the fundamental principle which recognizes the right of the Legislature, in the exercise of its power to legislate in matters subject to its control, to enact such measures and adopt such means as may be in its opinion appropriate and desirable, without interference on any ground or for any reason by the Courts, whenever the means or the methods adopted by the Legislature are not arbitrary or discriminatory and bear a logical relation to the facts which the Legislature had before it or could conceivably have had before it.

In construing statutes, the authority of this Court is exhausted when it has ascertained that the Legislature had power to legislate in matters of police and it is not concerned with the policy of the legislation. Ascertaining the power to legislate, which is apparent in the case, unless the statute appears clearly to be arbitrary or unreasonable and without substantial relation to its object, the judgment of the Legislature is final and the statute must be sustained. *Williams v. Baltimore, 289 U. S. 36; Hodge v. Cincinnati, 284 U. S. 335; Price v. Illinois, 238 U. S. 446; McLean v. Arkansas, 211 U. S. 539; Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192; Green v. Frazier, 253 U. S. 233; C. B. & Q. R. R. Co. v. McGuire, 219 U. S. 549; Stephenson v. Binford, 287 U. S. 251; Sproler v. Binford, 286 U. S. 374.*

That the legislation changing the form of withdrawal was not arbitrary and unreasonable, but was considered to be appropriate and necessary to further the interests of building and loan and to meet existing conditions,

is further evidenced by an inspection of similar legislation cited in the appendix to this brief, p. 11, passed by many States of the Union from 1930 to 1935. This legislation from other States clearly indicates that there is nothing capricious or arbitrary in the provisions of Act 140 of 1932, but that this statute approaches, if indeed it does not exactly reflect, the norm of legislation considered to be appropriate as a solvent for current building and loan needs everywhere. The evidence or his point is ample to sustain the validity of the Louisiana Statute as a reasonable and proper exercise of the police power.

The Legislature of Louisiana, like the Legislature in many other States, naturally attempted to ameliorate conditions resulting from the cluttering of the withdrawal lists and which prevented a fair payment of withdrawals on applications, by providing for a distribution of the available funds to as many persons as possible, from time to time. Certainly, the provision which distributes on a fair basis the available funds for withdrawal, must have the effect of reassuring and of assisting a larger number of applicants and therefore of improving general business conditions, than if the requests were met only in the strict order of application as provided by the old law, and no applicant could receive anything until the first applicant on the list had been paid in full.

Such a provision is a reasonable exercise of the power of the Legislature, bears a reasonable relation to the end to be attained, is not capricious, arbitrary or discriminatory, and is therefore a proper and legitimate exercise of the police power.

The new provision for the payment of withdrawals will certainly make it easier for all the shareholders who need their money, to get without delay a certain proportion of their investments. To that extent, the new legislation is most reasonable, since great distress has always resulted whenever there was difficulty or delay in the reimbursement of these investments. The enactment of similar legislation in many states, by Legislatures solicitous for the rights of shareholders and to "liberalize" the withdrawal list, not only is beneficial legislation directed to meet and solve a definite need and problem, but has the effect, by spreading the cash distribution, of further mutualizing these associations, which by their nature and genius are everywhere essentially mutual and cooperative.

The appellants further object to the fact that by the Act of 1932 it is no longer required that one half of the net receipts should be segregated to pay withdrawals, but that the matter is left in each association to the discretion of the board of directors.

Under the 1916 law, one half of receipts must be paid to withdrawals.

This law did not meet present day conditions. The Supreme Court of Louisiana has already explained how "receipts" had to be whittled to face the obligations of building and loan associations. See *Orlando v. Reliance Homestead Association, 174 La. 980; Harding Realty Co. v. Blanchard, 170 La. 430.*

While providing strictly for withdrawals, and having in mind the needs of associations for taxes, repairs,

operating expenses, creditor obligations, etc., especially in times of stress, the Legislature thought it unwise to prescribe an inflexible rule for the use of cash funds to pay withdrawals, and left the matter to the discretion of the directors.

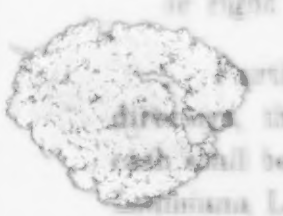
Building and loan associations in Louisiana are under the absolute control of the State Bank Examiner. The Directors, in reference to using the cash assets to pay withdrawals, as in every other matter of association management and policy, must comply with the orders or regulations of the State Banking Commissioner, or go out of business.

The statute provides that all withdrawals must be paid within one year, else the Commissioner of Banking is authorized to liquidate the Association. The Supreme Court of Louisiana, with its intimate knowledge of these Associations, whose rights, especially of late years, have frequently been before it, thought that this was a proper and reasonable regulation.

We quote an excerpt from the decision of the Supreme Court of Louisiana in the present case:

> "But it is contended that such power cannot be granted legally to a board of directors, composed of continuing members of an association, and having, therefore, a personal interest in conflict with that of the withdrawing members, in the matter of appropriating the receipts of the association to the payment of dividends rather than to the payment of applications for withdrawal. The Legislature evidently concluded that there was no great danger of an abuse of the authority which was given to the

boards of directors of building and loan associations. The interests of all of the shareholders, including, of course, the withdrawing shareholders, are protected from abuse of authority on the part of the board of directors, by the fact that the statute has placed all building and loan associations under the supervision and control of the state bank commissioner. We called attention to that in State ex rel. Italo-American Homestead Association. Section 64 of the act so provides, and requires every building and loan association to make semi-annual reports to the commissioner; and section 65 provides: 'Twice every year or oftener, if he deems it necessary, the Commissioner shall make an examination into the affairs of each such association'. And Section 67 imposes upon the commissioner the duty of seeing that the officers and directors of building and loan associations perform their duties faithfully; and the same section of the statute empowers the commissioner to enforce his orders in that respect, under penalty of liquidation of the association. Aside from these considerations, a withdrawing member of a building and loan association, as we have pointed out, may withdraw his application at any time, and have all the advantages enjoyed by the other continuing members. Our conclusion is that the plaintiff in this case has no cause or right of action." (R. 287, p. 48).



...further, in thus leaving to the discretion of the directors the question of how much of the association's ... shall be used to pay applications for withdrawals, the ... Legislature is merely going back to the original ... of the building and loan law of the State.

Act 120 of 1902, the first law on the subject of withdrawals in Louisiana, provided that the moneys to be used to pay withdrawals should never exceed one half of the

receipts. See *Section 7 of Act 120 of 1902* (Appendix, p. 8).

But there was no minimum to be applied to the purpose of paying withdrawals. In other words, the only provision was that there should be no attribution of more than fifty per cent, and below that maximum the Directors could exercise their entire discretion in the matter.

Act 280 of 1916 fixed one half of the net receipts as the amount to be used for withdrawals. (See Appendix, p. 8).

Now the statute of 1932 in effect goes back to the original rule, since the matter is left to the discretion of the directors. No one has ever suggested that the original Act of 1902 was unconstitutional or unreasonable in any way.

But the appellants declare that this discretion of the Directors is unregulated, and that the new provision means that no withdrawals will ever be paid.

Withdrawals must be paid under the law. Under Section 54 of the Statute, it is expected under normal conditions that such payments shall be made within sixty days from the date of application.

It is only where the Association is unable to pay applications in full, after a period of sixty days, that the application register is inaugurated.

Directors are not to be assumed to be the enemies of their shareholders, but are their representatives and agents,

who have no right to act except for the benefit of the Association and of its owners, the said shareholders. These directors are elected by the shareholders (Section 36), must be shareholders themselves (Section 37), must take an oath to discharge their duties conscientiously (Section 38), and in no event can be elected for a longer term than two years (Section 36). (See Appendix, pp. 9 and 10).

Finally, any fears that the appellants have as to the withholding of funds which should properly be applied to paying withdrawals are set at rest, as the Supreme Court of Louisiana said in the present case, by the complete control, not merely supervision, which the State Bank Commissioner has over these Associations in Louisiana. And finally, the Louisiana Statute as amended by *Act No. 44 of the Second Extraordinary Session of 1934* (see Appendix, p. 7), provides that an association which fails to pay any withdrawals for a period of one year, shall be subject to liquidation by the State Banking Department, so that all its assets may be turned into cash and delivered to its shareholders.

There remains to be noticed only the claim that Act 140 of 1932 does not in terms state that it is emergency legislation and that the operation of the new building and loan laws in Louisiana is not restricted by any time limitation stated in the Statute.

The Legislature of Louisiana had the power, under its sovereign and reserved grant of legislative authority, to legislate for the control of building and loan associations and of shareholder memberships in such associations.

It did so in 1932, as originally in the early enabling Act of 1888, and also, many years ago, in the general statutes of 1902,—without limitation as to time.

Congress and the Legislature, enjoying complete control over carriers, banks, utility companies, and insurance societies, are entitled to enact such reasonable laws as are intended to meet current conditions and to remain in force until repealed. The same principle naturally applies to the control of the Legislature over building and loan associations.

There is no necessity, in order that a regulatory statute should be a valid exercise of the police power, that it should be limited as to time. At a later date, still exercising its power of control, the Legislature may in the future make further changes in, or may entirely abolish, the rules which it adopted in 1932. To deny this is to deny that the Legislature has continuing police power and authority over these quasi-public institutions.

No one would suggest that State bank legislation must be limited as to time, or that Congress can only exert its power over interstate commerce in a statute which will in advance state the limit of its duration.

The general reserved police power of the State over matters remaining subject to its control, is, it is submitted, no less in extent or scope than the delegated and special powers which the States have turned over to the central government.

Since Congress can exercise without any limitation whatsoever its delegated police power, which it has ob-

tained from the States, it is fairly clear that the reserved police and sovereign power as to subjects which have not been transferred to the Congress, must be equally complete and absolute in the States, and cannot for its validity depend on whether or not the Legislature has determined in advance the term of such police power regulation and statutes.

We present this case on the basis of the right of the Legislature of Louisiana to control building and loan associations at all times, and we submit that the shareholder relationship enjoyed by the petitioners, even it should be regarded as contractual, could not thwart or frustrate the exercise by the State of its undoubted police power to control these quasi-public institutions.

**Point 4.**

**A shareholder's right of withdrawal in a building and loan association is purely statutory, is always within the control of the Legislature, and may be altered by the Legislature in its discretion. It has none of the characteristics of a conventional agreement, or vested right.**

No one can subscribe to shares in a building and loan association, except in accordance with the controlling statute.

Shares are issued by the building and loan association and acquired by the member to the extent only that the enabling statute permits this to be done.

The entire relationship, although consensual in form, is in substance wholly statutory.

The decisions of the Supreme Court of Louisiana have settled that the rights of the shareholders in these associations are entirely statutory, and that agreements, which go beyond the provisions of the statute, are absolutely null and void.

In *Conservative Homestead Association v. Dreyfous, 175 La. 404*, a shareholder claimed the right to set off his indebtedness to the association by the use of shares at par,—a privilege granted to the shareholder not only in the stock subscription, but also specifically set forth in the Act of Incorporation of the association. The Court held that the enabling statute did not confer any such privilege, that the shareholder could claim only such rights as were provided for by the statute, and that any provisions of the charter or of his subscription to the stock of the Association, which went beyond the Louisiana law were inoperative and null. This interpretation of the State law controlling these State institutions, as well as of the scope of the rights of a building and loan shareholder under the law of Louisiana, is, it is submitted, controlling on this Court. *Louisville Gas and Electric Co. v. Coleman, 277 U. S. 32, 36; Merchants' Bank v. Pennsylvania, 167 U. S. 461, 462.*

The Supreme Court of Louisiana said, in that case:

> "At the outset, we are impressed with the fact that a homestead building and loan association **cannot validly enter into a contract with one of its members that is in conflict with the statute** creating, regulating and defining the rights, powers and privileges of homestead associations. . . . "

*People ex rel. Rodgers v. Coler (1901), 166 N. Y. 1:*

"**The obligations and legal effect of a promise or engagement imported into a contract by force of a statute,** as in this case, whereby the contracting parties agree to obey or execute some law, **depend entirely upon the validity of the law.** * * * **Such a promise or agreement cannot survive the statute upon which it is founded, but must fall with it, since it can have no independent existence arising from the consent of the parties or the meeting of minds.**"

*Publicker v. Pottash Bros. Building and Loan Association, (Pa.), 159 Atl. 58,* decided March 5, 1932:

"If this were a case between two ordinary litigants, the compromise would be sustained, **but building associations are creatures of statute** and are in a class by themselves. The nature of the claim of the plaintiff did not change by reason of the fact that a compromise was effected. She did not lose her character as a withdrawing stockholder. **The officers of the association could not legally give her a preference,** nor could they advance her position as a withdrawing stockholder, so that she would precede in the distribution those who had made application before her. **She and they were equally bound by the law which was passed to govern the mutual rights of the shareholders.** She cannot by resort to a suit gain a preference which the law does not give her. The fact that the claimant has obtained a judgment ascertaining the amount of her claim does not alter the character of the claim."

*Abie State Bank v. Weaver (1931), 282 U. S. 76:*

"Notwithstanding the provisions of the Bank Guaranty Law, there is, properly speaking, no contract between the depositor and other banks. The Bank Guaranty Law provided for a fund to be

raised by assessments upon all the state banks, and, while this was regarded as an important safeguard for all depositors, **it was but a police regulation, the sanction of which lay in the constitutional power of the state and not in contract."**

The privilege of withdrawal does not exist except as the same may be conferred by the by-law or by the statute. *Fitzgerald v. State Mutual Building and Loan Association, 76 N. J. Eq. 137; Thirteenth Ward B. & L. Assn. v. Weissberg, 115 N. J. Equity 487.*

A statutory obligation is not a contract within the meaning of the Constitution. It is a measure of legislative policy, subject like all other measures of policy to any change the Legislature may see fit to make, either in the extent of the liability or in the means of its enforcement. *Louisiana v. New Orleans, 109 U. S. 285; Garrison v. City of New York, 21 Wall. 196; Crane v. Hahlo, 258 U. S. 142, 146.* This rule is particularly applicable to quasi-public institutions, like building and loan associations, banks, insurance companies, utility companies, etc.

When the petitioners acquired shares in the defendant association, they acquired the shares which were issued, and which could be issued, solely and only under the authority of the statute. Neither these shareholders nor the building associations could agree to alter the statutory authority under which alone these quasi-public institutions could issue these shares.

When the statute which furnished the origin of the rights of petitioners was amended, the petitioners' rights which depended wholly on the statute were necessarily

modified to conform to the new policy of the State as expressed in the present statute. This, within settled constitutional principles, involves no impairment of any contract; for what was altered was a statute, not a contract.

## COMMENT ON PRINCIPAL CASES RELIED UPON BY OPPONENTS.

In their brief at page 11, opponents lay stress on the language of the Supreme Court of Louisiana in the case of *State ex rel. Orlando v. Reliance Homestead Association, 174 La. 980*, where language was used to the effect that the shareholder could not be deprived of the withdrawal rights granted to him by the applicable statute.

The quotation, as made by opponents at page 11 of their brief, is as follows:

> "By giving to shareholders the right to withdraw their shares and by prescribing the method by which funds are to be made available for the payment of their claims when their applications to withdraw are filed, the law maker gave them a privilege which cannot be denied them."

This point is completely answered by the Supreme Court of Louisiana, in its decision in the instant cases (R. 287, p. 47) as follows:

> "The Court meant that the privilege **could not be denied them** (the withdrawing shareholders) **by the Court,—not that it could not be denied them by an act of the Legislature.** The case was decided before the Act of 1932 came into effect, and the only question in the case, as stated in the opinion, was whether the association was required by Section 7 of Act of 1902 as amended by the Act of 1916, to

> apply one-half of the gross receipts, or only one-half of the net receipts, to the payment of withdrawals when they were in arrears sixty days. Hence the expression in the opinion, which the plaintiff here relies upon, is not at all appropriate to this case."

The plaintiffs claim that their rights were vested for the reason they had done all that was expected of them under the old building and loan act, and they quote *Coombs v. Getz, 285 U. S. 434; Ettor v. Tacoma, 228 U. S. 148; Pacific Mail S. S. Co. v. Joliffe, 69 U. S. 450,* and *Bedford v. Eastern Building and Loan Assn., 181 U. S. 227.*

Not one of these cases, except the *Bedford* case, involves a quasi-public institution. In addition the legislation, there condemned, would have deprived the claimants, improperly and unreasonably, of all remedy of recovery. Here there is no annulment of right, but only a change, as to order and amount, of the privilege of withdrawal, and the rights of the shareholder in the institution are at all times maintained and recognized.

The principal cases, on which opponents have apparently relied in their brief, are here commented upon in order to prevent any misapprehension as to what was held in those cases, although we submit that the cases thus cited by opponents have no application to the precise question now presented.

In the *Coombs* case, cited by opponents, the right of action was maintained and was held not to have lapsed by the repeal of the statute under consideration in that case for the reason that the claim as specifically stated by the Court was not statutory but quasi contractual.

In *Ettor v. Tacoma, 228 U. S. 148*, the right of abutting owners to compensation for damages arising from a street grading was held to survive the repeal of the statute which created the right, for the reason that otherwise the claimants would have had no recovery for the damages which they had suffered by the grading. In the present case, the shareholders are not deprived of any ownership of their stock, but a change in the remedy, i. e., the method and time of withdrawal, is all that is attempted by the Act of 1932. The decision in the cited *Tacoma* case especially provides that "If the changing or repealing statute leaves the parties a substantial remedy, the legislature does not exceed its authority". So that this decision is not in any way opposed to the issues presented by the present case.

The cases of *Coombs v. Getts* and *Ettor v. Tacoma* were cited, without success in this Court, in the more recent case of *Doty v. Love, No. 556*, October 1934 term, not yet officially reported, where it was claimed that a statute of Mississippi, providing for the reorganization of insolvent and closed banks, on the vote and consent of only three-fourths of the creditors with the approval of the Superintendent of Banks, was unconstitutional, since it effected, under certain circumstances, the release of the personal liability of the shareholders, previously available under the Mississippi law for the protection of depositors of the defunct bank. This Court held that all that the new statute did was to change the method of liquidation and that the new statute was constitutional. Although the decision of this Court was not in terms placed on that ground, the control of the State over the details of the liquidation of

this insolvent bank and the right of the State to change the method of liquidation, altering the pre-existing rights of the depositors and shareholders, constituted a plain exercise by the State of its inherent and paramount police power in banking matters affected with a public interest, transcending the constitutional protection and guarantees unsuccessfully urged by the non-assenting creditors.

In *Pacific Mail S. S. Co. v. Joliffe, 69 U. S. 450,* the pilot was permitted to recover for earned fees, although the statute authorizing the fees had been repealed, on the ground that the claim was based on a *quantum meruit,* and the Court said:

"It has become a vested right which stands independent of the statute",—an observation which cannot be applied to the right of withdrawal from a building and loan association, which is purely statutory and never an independent right. See discussion, under Point 4 of the present brief, to the effect that under the law of Louisiana, the rights of a shareholder in a building and loan association are purely and only statutory. *Conservative Homestead Association v. Dreyfous, 175 La. 404.*

In *Bedford v. Eastern Building and Loan Association, 181 U. S. 227,* the loan had been made in New York and the note although secured by mortgage in Tennessee was payable in New York. Suit was brought in the federal court in Tennessee to enforce the New York note and the collateral mortgage; and payment was resisted (1) because after the date of the New York contract a statute had been passed in Tennessee imposing certain requirements on building and loan associations as a condi-

tion of doing business in Tennessee; and (2) because the transaction was usurious according to the law of Tennessee.

This Court held that the contract was a valid New York contract, depending for its validity on the law of New York, and therefore, could not be affected or impaired by the law of Tennessee.

This New York Building and Loan Association was obviously not subject to regulation by any State except that of its creation, and its contracts and member relationships constituted property in that State and not in Tennessee.

The situation would have been different if the Building and Loan Association had settled in Tennessee to do business. But, so far as the case shows, the Building and Loan Association was no longer active in Tennessee and was merely trying to collect, in the federal court in that State, on a New York contract made with a Tennessean and valid when made.

In *Washington ex rel. Seattle Title Trust Co. v. Rolerge, 278 U. S. 116*, and in *Eubank v. Richard, 226 U. S. 137*, this Court holds that the enforcement of zoning statutes cannot be left to the unregulated and uncontrolled vote of a certain number of neighboring property owners. A situation which has no resemblance to the present case, for the reason that the management of a quasi-public corporation by its own directors under the strict control of the State presents no question involving any unregulated or outside control of a matter in which the State is inter-

ested. The 1932 Louisiana Statute in vesting complete control in the State Banking Department contains every safeguard needed for the protection of shareholders' rights.

**Conclusion.**

It is submitted that Act 140 of 1932 of the Legislature of Louisiana is valid; that the appeals herein should be dismissed; and that the judgments of the Supreme Court of Louisiana in these related cases should be affirmed.

Respectfully submitted,

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# APPENDIX.

## TABLE 1.

**Summary Table of Number of Associations, Total Membership, and Total Assets of Building and Loan Associations, by States, 1933.**

| | States | No. of Assns. | Total Membership | Total Assets |
|---|---|---|---|---|
| 1. | New Jersey | 1,532 | 970,000 | $1,050,000,000 |
| 2. | Pennsylvania | 2,908 | 884,065 | 957,791,288 |
| 3. | Ohio | 737 | 1,968,129 | 895,028,774 |
| 4. | Massachusetts | 227 | 436,920 | 502,873,869 |
| 5. | Illinois | 889 | 782,300 | 394,648,000 |
| 6. | New York | 293 | 481,928 | 394,643,465 |
| 7. | California | 182 | 350,000 | 359,894,896 |
| 8. | Indiana | 380 | 341,700 | 246,333,779 |
| 9. | Wisconsin | 184 | 238,238 | 245,291,106 |
| 10. | Maryland | 1,000 | 283,000 | 185,000,000 |
| 11. | Missouri | 233 | 207,950 | 169,255,761 |
| 12. | Louisiana | 99 | 166,241 | 143,656,771 |
| 13. | Michigan | 65 | 185,267 | 142,693,028 |
| 14. | Nebraska | 83 | 176,500 | 111,876,652 |
| 15. | Kentucky | 164 | 170,300 | 110,937,465 |
| 16. | Kansas | 150 | 155,152 | 106,960,685 |
| 17. | Texas | 139 | 137,700 | 100,393,588 |
| 18. | Oklahoma | 90 | 129,339 | 99,238,441 |
| 19. | Dis. of Columbia | 28 | 96,785 | 90,533,000 |
| 20. | North Carolina | 209 | 74,182 | 68,439,937 |
| 21. | Washington | 66 | 200,000 | 61,510,158 |
| 22. | Virginia | 89 | 59,100 | 53,652,977 |
| 23. | Iowa | 74 | 60,072 | 41,789,377 |
| 24. | Minnesota | 75 | 96,179 | 39,038,245 |
| 25. | Colorado | 52 | 50,000 | 35,340,471 |
| 26. | Rhode Island | 8 | 47,898 | 33,691,232 |
| 27. | West Virginia | 60 | 50,200 | 33,612,941 |
| 28. | Arkansas | 55 | 30,213 | 25,794,298 |

TABLE 1—(Continued).

**Summary Table of Number of Associations, Total Membership, and Total Assets of Building and Loan Associations, by States, 1933.**

| | States | No. of Assns. | Total Membership | Total Assets |
|---|---|---|---|---|
| 29. | Connecticut | 44 | 31,534 | $ 25,607,678 |
| 30. | Maine | 36 | 25,930 | 23,967,428 |
| 31. | Alabama | 39 | 33,480 | 23,843,533 |
| 32. | Utah | 21 | 34,000 | 23,029,669 |
| 33. | South Carolina | 98 | 18,000 | 20,000,000 |
| 34. | Oregon | 22 | 31,400 | 18,228,564 |
| 35. | Tennessee | 42 | 25,640 | 18,993,047 |
| 36. | Delaware | 43 | 19,430 | 15,257,369 |
| 37. | Montana | 27 | 25,800 | 15,026,454 |
| 38. | New Hampshire | 29 | 16,152 | 13,761,730 |
| 39. | Florida | 59 | 10,370 | 13,129,227 |
| 40. | North Dakota | 22 | 22,251 | 12,054,641 |
| 41. | Mississippi | 44 | 6,274 | 10,943,600 |
| 42. | Wyoming | 8 | 14,850 | 7,889,189 |
| 43. | Georgia | 40 | 18,443 | 6,891,548 |
| 44. | Idaho | 14 | 9,550 | 6,272,313 |
| 45. | South Dakota | 20 | 9,650 | 5,844,910 |
| 46. | Vermont | 14 | 5,600 | 5,418,676 |
| 47. | Hawaii | 11 | 28,012 | 5,288,989 |
| 48. | New Mexico | 16 | 4,500 | 4,316,562 |
| 49. | Nevada | 5 | 2,281 | 1,246,345 |
| 50. | Arizona | 2 | 1,600 | 600,000 |
| | TOTAL | 10,727 | 9,224,105 | $6,977,531,676 |

## TABLE II.

### Mortgage Investments of Building and Loan Associations—1932-1933.

| States | Mortgage Loans Outstanding 1932 | Mortgage Loans Outstanding 1933 |
|---|---|---|
| Alabama | $ 18,206,657 | $ 14,963,727 |
| Arizona | 3,022,300 | 420,000 |
| Arkansas | 26,287,570 | 17,495,436 |
| California | 295,851,951 | 232,428,452 |
| Colorado | 25,758,506 | 24,906,062 |
| Connecticut | 24,504,750 | 22,642,147 |
| Delaware | 13,737,035 | 12,564,895 |
| Dist. of Columbia | 82,385,000 | 83,311,000 |
| Florida | 7,244,685 | 6,006,642 |
| Georgia | 5,983,523 | 5,728,427 |
| Illinois | 379,923,900 | 310,074,000 |
| Idaho | 4,355,827 | 4,142,535 |
| Indiana | 227,470,000 | 196,713,421 |
| Iowa | 39,037,376 | 34,334,500 |
| Kansas | 89,052,540 | 76,178,598 |
| Kentucky | 110,196,706 | 100,352,563 |
| Louisiana | 124,379,006 | 102,856,845 |
| Maine | 22,429,789 | 21,063,337 |
| Massachusetts | 460,794,740 | 406,400,260 |
| Michigan | 124,161,048 | 101,623,146 |
| Minnesota | 33,219,703 | 30,827,410 |
| Mississippi | 12,743,690 | 8,351,246 |
| Missouri | 158,052,991 | 130,264,177 |
| Montana | 17,429,971 | 12,346,115 |
| Nebraska | 102,832,373 | 84,454,842 |
| Nevada | 1,077,384 | 872,912 |
| New Hampshire | 13,305,751 | 12,806,264 |
| New Jersey | 926,101,801 | 900,000,000 |
| New Mexico | 3,899,377 | 3,426,739 |
| New York | 363,867,626 | 332,962,466 |

## TABLE II—(Continued).

### Mortgage Investments of Building and Loan Associations—1932-1933.

| States | Mortgage Loans Outstanding 1932 | Mortgage Loans Outstanding 1933 |
|---|---|---|
| North Carolina | $ 65,328,801 | $ 56,285,134 |
| North Dakota | 10,815,278 | 9,375,139 |
| Ohio | 951,405,870 | 749,559,478 |
| Oklahoma | 93,666,474 | 73,493,316 |
| Oregon | 15,725,139 | 13,968,996 |
| Pennsylvania | 825,296,120 | 714,707,770 |
| Rhode Island | 33,228,800 | 28,015,813 |
| South Dakota | 5,445,806 | 4,613,055 |
| Tennessee | 14,668,000 | 13,581,171 |
| Texas | 90,410,170 | 76,960,311 |
| Utah | 30,063,715 | 14,694,201 |
| Vermont | 4,931,543 | 4,722,729 |
| Virginia | 48,692,147 | 44,018,097 |
| Washington | 48,984,258 | 42,792,203 |
| West Virginia | 27,430,879 | 24,304,732 |
| Wisconsin | 218,846,585 | 186,076,388 |
| Wyoming | 8,252,261 | 4,849,641 |
| Other States | 179,800,000 | 161,950,000 |
| Hawaii | 4,419,996 | 4,213,862 |
| TOTALS | $6,394,725,418 | $5,518,699,600 |

*Act 151 of 1888:*

"No. 151 AN ACT

Defining and declaring homestead, or building associations, societies and companies, corporations for the promotion of public utility and advantage.

Whereas, homestead and building associations, societies and companies, as now established in this State, are corporations promoting works of great public utility and advantage.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the terms 'public utility and advantage', in the Revised Statutes, section (683) six hundred and eighty-three, and in all laws amendatory thereof, be held to include in their meaning the objects and purposes of homestead, or building associations, societies and companies as now established in this State."

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*Section 81, Act 140 of 1932:*

"Section 81. The provisions of the following laws and statutes of the State and Legislature of Louisiana are expressly superseded by the corresponding and relevant provisions of the present statute:

'Act 120 of 1902, Act 280 of 1916, Act 292 of 1910, Act 244 of 1912, Act 159 of 1910, Act 214 of 1910, Act 278 of 1928, Act 122 of 1920, Act 281 of 1928, Act 185 of 1924, Act 128 of 1926, Act 126 of 1926, Act 277 of 1928, Act 282 of 1928. This Statute shall further repeal all laws of this State not enumerated in the present Section and on the same subject matter, and also all laws, not enumerated in the present Section, which may in any manner or to any extent whatsoever be inconsistent with the present statute. **The provisions of Act 151 of**

**1888, of Louisiana, recognizing homestead or building and loan associations, societies and companies, as established in the State of Louisiana, as quasi-public corporations, promoting works of great public utility and advantage and furthering the public welfare,** and the provisions of Act 340 of 1926, and of Act 180 of 1910, and of Act 215 of 1912, **are neither superseded nor repealed by this statute, but are, on the contrary, declared to be in full force and effect'."**

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*Constitution of Louisiana, 1921, Article VI, Section 18:*

"At the expiration of the term of office of the Examiner of State Banks, there shall be appointed in lieu thereof by the Governor, by and with the advice and consent of the Senate, a State Bank Commissioner who shall also be Supervisor of Homestead and Building and Loan Associations of the State. His term of office shall be four years. The Legislature shall fix his compensation, and define his powers and duties, which until otherwise provided by law, shall be the same as now vested in the Examiner of State Banks."

---

*Act 140 of 1932, Section 80:*

"Section 80. Except as otherwise provided in this Statute, all of the provisions of the present Statute shall be applicable to every existing corporation, association or society, heretofore formed under the laws of the State of Louisiana for a purpose or for purposes for which an association, corporation or society might be formed under the present Statute; provided that, **in the interpretation and application of this Statute, particularly in respect** of building

and loan associations heretofore organized and **the rights of the members thereof,** the following considerations and principles shall be treated and considered as fundamental; (a) the essentially mutual and co-operative character of building and loan associations and **the fact that they have always been considered as quasi-public institutions, subject to complete State control, supervision and regulation;** (b) **the necessity that changes in general conditions should be reflected in improved legislation,** and that, in the public interest, the Legislature should have the power to treat and settle, in a manner uniformly applicable to all associations engaged in said industry, **all the new problems and conditions constantly arising in building and loan matters;** (c) **the paramount public interest and concern in the promotion of thrift and in building of homes,—matters vital to the public welfare, profoundly affected with a basic public interest and, therefore, at all times subject to the control of the Legislature, in the exercise of the police power,** to protect the health, morals and safety of the people."

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*Section 67 of Act 140 of 1932,* as amended by *Act 44 of the Second Extraordinary Session of the Legislature of Louisiana for 1934, page 156:*

"Section 67—Whenever it shall appear that any building and loan association, society, or company has violated its charter; or that its officers or directors are violating, or have violated, any law regulating the operation of such institutions; **or that such institution has been unable for any period of twelve months to meet in full the demands made upon it for withdrawals; or has been unable for a like period to earn reasonable profits;** or whenever the State Bank Commissioner and Supervisor

of Homestead and Building and Loan Associations shall have reason to conclude that any such association, society, or company is in an unsound or unsafe condition to transact the business for which it was organized, or that it is unsafe, inexpedient or hazardous for said institution to continue its business, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations may and is hereby authorized to forthwith close such institution and take possession of its books, property and affairs and retain such possession until final liquidation or other disposition of its affairs as hereinafter provided for. . . ."

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*Section 7, Act 120 of 1902:*

"That a member may withdraw his unpledged shares at any time by giving written notice of such intention as provided for in the act of incorporation or by-laws, and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges and losses accrued, or contingent, to the time of the notice of withdrawal, as the board of directors may determine, with no interest or profits from the time of such notice; but at no time shall more than one-half of the monthly receipts be applicable to the demands of the withdrawing members without the consent of the directors".

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*Section 7, Act 280 of 1916:*

"That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of

the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.

"Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid.

"Any association may permit a member to withdraw part of the accumulation to his credit without thereby reducing the number of shares held by him."

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*Section 36, Act 140 of 1932:*

"Subject to such limitations, restrictions or reservations as may be provided in the articles of incorporation, the by-laws or the present statute, all the corporate powers shall be vested in, and the business and affairs of the association shall be managed by, a board of directors. The directors shall hold office for one year or until their successors are chosen and have qualified; but no director shall be elected for a longer term than two years at a time but may be re-elected from time to time."

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*Section 37, Act 140 of 1932:*

"No person shall be eligible as director of an association unless he is a shareholder, in his own right, owning, or who has bona fide subscribed to, shares of said association of the par value of at least five hundred dollars. Every director who shall sell or hypothecate all shares owned by him, or so much thereof that he shall cease to be the owner, or bona fide subscriber, in his own right, free from encumbrances, of the amount of such shares aforesaid, may be removed from the office of director; provided, however, that any executor, administrator, tutor or trustee, holding shares of an association of the value of at least one thousand dollars in his or her respective capacity, shall be eligible as director thereof".

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*Section 38, Act 140 of 1932:*

"All directors of building and loan associations shall, within sixty days after the date of their election and in every case before assuming the duties of their office, take oath to properly and conscientiously discharge their duties as directors, which oaths shall be promptly filed with the State Banking Department. Said oaths shall be in writing and shall be duly signed, and must be renewed as to each director upon the occasion of each re-election to the board. The State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations shall be authorized to suspend any director who has failed to comply with the present requirement, and no suspended director can be reinstated except for good cause shown, after taking the said oath as aforesaid. And any director who without excuse duly accepted by the members of the board present at such meetings, and spread upon the min-

utes of such meetings, fails to attend three consecutive meetings of the board of directors of any homestead and building and loan association may be deprived of membership on said board, which, pending a re-election by the shareholders, cannot be restored except for good cause shown."

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**Summary of Statutes Affecting Withdrawals in Building and Loan Associations from Numerous States, Adopted Since 1930.**

ALABAMA: Act of 1927, pages 431-432—1928 Code, Sec. 7097, provided that withdrawal should be in accordance with the by-laws of the association.

New Code P. L. 1931, 1932 amendment of the Code. Pages 232-233, Sec. 7111 (33) the legislature for the first time, regulated the payment of withdrawals, providing if funds insufficient to pay all, they must be paid in the order of filing notices, but the association would not be required to use more than one-half of net monthly receipts, no withdrawal payment to any member to exceed $1,000 in each thirty days ahead of other applications and that the board of directors might pay from said half of receipts, withdrawals not exceeding $50 to any one member at any one time, or not exceeding $100 to any one member within thirty days, regardless of the order of the application.

Act No. 119, October 22nd, 1932, provides that any building and loan association not able to pay all withdrawing shareholders, may through its board of directors, with the consent of the Commissioner of Building and Loan Associations, in lieu of paying withdrawals, distribute its net

income, or any other funds which it may have, subject to distribution, ratably among all its investing shareholders.

CALIFORNIA: G. L. 1931, Act 986, p. 457. New Code—Notice may be revoked or waived, if withdrawal claims exceed 3% of all shares and investment certificates, association shall be "on notice," if claims exceed 15%, association shall be on "pro rata" basis, if claims exceed 10%, directors may put association on pro rata basis (6.01) payment of withdrawals subject to claims of creditors, expenses, etc.; if association on notice payments in order of maturity of notices except $50 per person per month may be paid with or without notice; if on a pro rata basis or on notice, dividends and new investments prohibited; if on a pro rata basis quarterly pro rata payment of all withdrawals; (6.02) association not on notice or on pro rata basis may pay withdrawals without notice (6.03).

P. 1933, C. 4, amends Sec. 6.02 (pertaining to withdrawals) of 1931 Code.

COLORADO: P. L. 1933, Chap. 47, p. 284, Article V, Sec. 5, if funds applicable to withdrawals are insufficient to pay all, depending upon the desire of the board of directors, shall be paid either in full, in the order of filing notices, or on a pro rata basis, if the former method is used, no withdrawal by one shareholder shall exceed $1,000 in thirty days ahead of other applications, and the board may pay out of the funds applicable to withdrawals, not exceeding $50 to one shareholder within thirty days, regardless of the order of application. If the pro rata method

is used, accounts not exceeding $25 may be paid in full. It provides that *the withdrawing shareholder shall not become a creditor*, that pending payment of withdrawal shares on the withdrawal list shall only be entitled to half the dividends currently declared on such shares.

Sec. 8, *all stock shares or certificates or instruments issued by associations prior to the passage of the Code*, except permanent, or non-withdrawable stock, *shall be subject to all the rights and all the liabilities of this Article concerning withdrawals and that the holders shall be treated as shareholders.*

FLORIDA: P. L. 1931, Chap. 15606 (No. 5), page 1050, one-half the cash received from collection of share or stock dues, cash payments applied directly in reduction of mortgage or other loans, the net income from the lease or rental of assets, the cash derived from the sale of assets * * * shall be distributed quarterly when sufficient funds have accumulated, to members whose notices of withdrawal have been on file ten days previous to such distribution, on a pro rata basis of not less than 1% of the original amount to be paid to each such withdrawing member, except that any member whose payment other than the last payment shall amount to less than one dollar, may receive a distribution of the cash so set aside when the accumulated percentages equal or exceed one dollar in amount, if doubtful assets exceed 20% of total assets, association shall quarterly distribute net cash receipts to all members on the same percentage basis as if each member had filed a notice of withdrawal; members who apply for withdrawal, shall receive no dividends after filing notice.

P. L. 1933, Chap. 15908 (No. 51), page 111, further amends the 1931 statute in various respects concerning the payment of withdrawals and also provides (Sec. 10), *that members shall be deemed stockholders and not creditors, regardless of whether or not their notices of withdrawal have been filed or matured;* binds all members on re-organization as to all matters including reduction of liability, limitation on withdrawals on a majority vote of all shareholders whose *"rights in or against the association shall be deemed modified accordingly."*

ILLINOIS: Section 13 of the Building, Loan and Homestead Associations Act of 1919, was amended, April 28, 1932, so as to provide that, under certain conditions, the existing rights of withdrawing shareholders may be changed and affected by putting the Association on a pro rata basis. This new provision in respect of withdrawals made a fundamental change in the preexisting rights of shareholders.

Section 24 of said Act of 1919 of Illinois was also amended by providing that shares of an Association at their withdrawal value may be accepted in full or part payment of real estate or other assets owned by the Association.

IOWA: 1933, C. 165. Articles of incorporation, by laws or resolution of board may provide order in which withdrawals shall be paid and when dividends shall cease on shares on which withdrawal demands have been made and what portion of the association's funds or receipts shall be used for payment of withdrawals and matured shares.

KENTUCKY: 1934, C. 18. Withdraw thirty days' notice. After thirty days apply one-half net weekly receipts to payment in numerical order. *Shareholders filing application for withdrawal shall remain shareholders until paid and shall not become creditors.* Association may pay applicant $500 in order, then renumbered and placed at end of list and in like manner until paid. May pay members holding investment of less than $100 in dire distress out of turn.

MASSACHUSETTS: G. L. 1932, C. 170, Sec. 16, p. 2240. Withdrawals on thirty days notice; not more than one-half funds in treasury applicable without consent of directors; paid in order of notice.

L. 1932, C. 45. Established the Co-Operative Central Bank, a reserve institution for building and loan associations, to provide mutual credit for the payment of maturities and withdrawals, compelling all associations to become members, and aid it financially. (Held constitutional—in Re Opinion of the Justices, 181 N. E. 833, 836).

1933, C. 144, Sec. 17, p. 178—Shareholder, on thirty days notice, may withdraw unmatured or paid up shares * * * withdrawals paid in order of notices * * * directors may order that not more than one-half of cash on hand, in banks and one-half of funds received until order is rescinded, be applicable to demands * * * whenever there is unusual demand; board with approval of Commissioner or he, in his discretion may order that the right of withdrawing or maturing shareholder be limited to not in excess of 20% of the value of said shares or $400 at any one time; sums * * * paid in order of notice and in

rotation * * * meantime no dividends to be paid to matured or paid up shares on which notice has been filed.

Sec. 21—When no payment has been made on withdrawal for six months all receipts, after payment of expenses * * * shall be applied to withdrawals * * * commissioner shall direct the method of disbursing.

1934, C. 73, p. 61—Sets up in the Co-operative Central Bank, a fund for the mutual insurance of building and loan shares against loss, all associations being compelled to contribute to the fund. (Held constitutional, *Lowell Co-Operative Bank v. Co-Operative Central Bank, 191 N. E. 921).*

MICHIGAN: L. 1931, Act 135—withdrawals on thirty days notice; not more than one-half of funds received in any one month shall be applicable to payment of withdrawals unless ordered by board; withdrawals paid in order notice is filed.

L. 1932, Act 20, p. 35, Sec. 6. Withdrawal on thirty days notice; one-half monthly receipts applicable to payment in order notices are filed. Certificate to be presented within ten days after notice, otherwise waived; if unpaid withdrawals exceed 5% of unpledged stock liabilities, funds available each month for payment upon withdrawal shall be paid to withdrawing shareholders pro rata instead of in the order of the filing of notices of withdrawal; at discretion of directors * * * to meet necessities of its shareholders, may pay to shareholders without application for withdrawal not in excess of $100 * * * in any one month.

L. 1933, Act 120, p. 164, further amends Sec. 6 by adding provision that with approval, board may provide that all funds available be apportioned and paid pro rata without regard to notices.

L. 1933, extra session, Act 14, p. 40 further amends Sec. 6, as to payment of withdrawals. After thirty days paid in part or in full; apply not more than ¼ net receipts unless a greater proportion is ordered by board; payment in numerical order; if application for more than $1,000, $1,000 paid when reached, application renumbered and placed at end of list and when reached again, paid like amount, renumbered and replaced at the end; shareholder not paid more than 50% of total holdings except when below $100 application paid in full when reached; not more than one application to withdraw from one member at one time. *Shareholders filing withdrawals remain shareholders until paid and shall not become creditors;* present certificate for payment within ten days after notice or right to withdraw waived. When aggregate withdrawals exceed 5% of unpledged stock liabilities, board, with approval, may pay sums available for withdrawal pro rata instead of in order of applications; to meet necessities of shareholders, board may pay to shareholders without application on file, $100 in any one month but such payments shall not be charged against said ¼ of net receipts; with approval board may provide funds available, be apportioned and paid pro rata to holders of shares not pledged for mortgage loans, without regard to application; available sums distributed at least twice a year. (Approved Jan. 2, 1934).

NEVADA: L. 1931, C. 51; New Code—Section 12 prohibits the association without the written consent of the State Bank Examiner from applying in one month to the payment of withdrawals and maturities more than one-half of the monthly receipts during the preceding calendar month; withdrawals must be paid in the order of their filing.

1933, C. 68. At no time without consent of examiner shall association apply in any one month to payment of withdrawals or maturities more than one-half of its receipts during month. Withdrawals paid in order of filing and no loans or investments made except with permission when withdrawal request on file for thirty days. Whenever payments are inexpedient, money available may be pro-rated irrespective of order of filing.

NEW JERSEY: P. L. 1932, C. 102, Sec. 52—see also C. 57, amending Sec. 23, permitting merger agreement to bar withdrawals and C. 160, permitting segregation of assets, scaling of shares and reduction of withdrawal value. Has been applied with approval of Commissioner of Banking and Insurance to shares for which applications for withdrawal had been made.

P. L. 1935, C. 59, Sec. 52. Maturities paid in order due out of ⅓ net monthly receipts; withdrawals paid in order notices filed out of ⅓ net monthly receipts; but if insufficient, withdrawals paid on rotary basis in installments of $50; suits for matured shares and withdrawals barred if funds disbursed as required; board may make additional funds available for matured shares and withdrawals but not more than ⅓ net receipts and borrowed

money shall not be used for withdrawals while maturities unpaid.

NEW YORK: L. 1933, C. 325—dividends on shares withdrawn until paid at half rate paid on unwithdrawn shares of same class; not more than one half receipts (not borrowed money) to pay matured shares and withdrawals without consent of directors (exception below); if one half receipts insufficient to pay all matured shares and withdrawals, receipts applied ¼ of receipts to pay matured shares, ¼ to pay withdrawals or directors or superintendent of banks may direct all withdrawals paid in proportionate installments, or directors may limit withdrawal payments to $100 per month and if proportional payment less than $25 such withdrawing member may withdraw not more than $25 monthly; if no payment made on any matured shares or withdrawal in 6 months after demand, all net receipts applied on pro rata basis.

L. 1935, C. 301—permits associations to create agency for insurance of shares of participating associations against loss up to $7,500 to any one shareholder of any such association.

NORTH CAROLINA: L. 1933, C. 122, p. 93—Whenever * * * shareholder whose stock has matured or whose right to withdraw * * * has accrued has not been paid because of insufficiency of funds, Secretary shall under instruction from directors, create fund * * * known as "withdrawal or maturity fund" out of net monthly receipts. From time to time, as board * * * may direct, the secretary shall make an equitable and ratable distribution of funds in "withdrawal or maturity fund" to share-

holders whose right has accrued; no shareholder shall have right to demand any funds in excess of the amount equitably and ratably distributed except on approval of board and/or Insurance Commissioner.

NORTH DAKOTA: L. 1931, C. 94, New Code. Sec. 8 provides for withdrawals and *that withdrawing shareholders shall remain shareholders and are "in no way to be deemed creditors of the association."* Withdrawals are to be registered and paid in the order in which the notices are received out of at least one-half of the collections of the association; if withdrawals are unpaid for six months all collections less operating expenses and amounts due on matured shares must be used for payment.

1933, C. 78, p. 109. Amends 1931 statute, provides that board shall classify and make uniform payments as to each classification; eliminates procedure on application six months' old.

OHIO: Until 1934, the payment of withdrawals was regulated by the by-laws of each association. By S. 1., 3d, s. ses. Baldwin's 1934 Revision of Throckmorton's Annotated Code of Ohio, Sec. 9651, p. 1098, the state assumed such regulation. Association must pay application in 30 days or apply one-third of net cash receipts thereafter, excluding borrowed money and proceeds from sale of assets, to payment in numerical order; directors may pay any applicant not exceeding $100 in any month out of said one-third of receipts or other funds, in any order; if application for more than $1,000 not more than $1,000 shall be paid upon it in order when reached and shall then drop to

bottom of list and thus be paid on rotary basis; "*stockholders filing written applications for the repurchase* (withdrawal) *of their stock shall remain stockholders until paid, and shall not become creditors.*" (Declaratory, see *Frederick v. Mutual B. & Inv. Co. & Mut. B. & I. Co.*, brief *supra*).

OKLAHOMA: St. 1931, C. 46, Art. 8, Sec. 9800—Withdrawal on 30 days notice, not more than one-half funds in treasury applicable to payment without consent of directors. Sec. 9823, not more than one-half funds in treasury applicable to payment of matured shares without consent of directors. Sec. 9834, on maturity of notice "entitled to receive * * * withdrawal value *at once.*"

L. 1933, C. 54, amends Sec. 9800. If aggregate withdrawals exceed 5% of unpledged stock directors may, with approval of Bank Commissioner, direct funds available each month for payment of withdrawals "to withdrawing shareholders in proportion to their stockholdings to be withdrawn, instead of in the order of the filing of notices of withdrawal."

TENNESSEE: 1933, C. 19, Sec. 7—Thirty days' notice of withdrawal; not more than two-thirds of monthly receipts from dues in prior month applicable without consent of board; by-laws may provide for monthly payment of $100 and prefer such over applications for amounts exceeding $100 regardless of order.

TEXAS: L. 1932, C. 18, 42nd Legislature, 3d called Session, p. 41, amends Section 47. No member to withdraw in excess of $100 in any month without thirty days

written notice, except when idle funds on hand. Payments may be made when and as may be determined by directors and provided by-laws approved by Banking Commissioner; withdrawals in excess of $100 shall be paid in order of filing except as otherwise provided. Not more than one-half of net receipts in any month shall be used to pay withdrawals or maturities without the consent of Directors. Whenever net receipts so made applicable to pay withdrawals and maturities are not sufficient to pay all, directors may from time to time fix maximum amounts to be paid upon each application during any one month, provided that full payment may be made to any member whose entire interest in association amounts to not more than $100 and provided that directors may order all withdrawals paid on a pro rata basis, or, with the approval of the Commissioner, may provide that all funds available for withdrawal shall be apportioned and paid pro rata to all shareholders of the association irrespective of the order of filing. *"Membership in the association shall remain unimpaired so long as any accumulation remains to his (withdrawing member) credit."*

WASHINGTON: 1933, C. 183, p. 711—Shares not to be withdrawn for three months from *issue;* notice may be waived; after filing, member not entitled to receive dividends; member may cancel notice by writing filed with association; payment in order of filing as funds available; if unpaid six months association shall apply three-quarter receipts from principal of loans repaid and received from other investments, less operating expenses, etc.; allows payment of withdrawals, regardless of filing to extent of $25 each month with report to supervisor; association may

disregard notices and priority and pay on ratable basis and power in supervisor to order same.

WEST VIRGINIA: L. 1932, C. 58, p. 130—Sec. 12 * * * At no time shall more than one-half of the net monthly receipts be applicable to payment of matured shares and withdrawals * * * without the consent of directors. Sec. 13—*Withdrawing shareholder* shall be paid such part of withdrawal value of his shares as may be determined by board and *remain a shareholder until full payment to him be made.*

In addition to the above, substantial changes have been made, since 1930, in the laws of other States, particularly, Arizona (P. L. 1931, C. 40, p. 82); Connecticut (L. 1933, C. 210); Illinois, 1933, Smith & Hard Rev. Statutes, P. 786-7, Sec. 225; Maine (L. 1933, C. 30); Maryland (L. 1933, C. 47, p. 99); New Mexico (L. 1931, C. 147; L. 1933, C. 78); Missouri (1931, Revised St., C. 35, p. 141; L. 1933, p. 182, at 184, Sec. 5593); Montana (L. 1933, C. 11); Oregon (L. 1931, C. 373; L. 1933, C. 328); Pennsylvania (L. 1933, C. 108; L. 1933, C. 114); Rhode Island (L. 1931, C. 1796); South Carolina (L. 1933, Act 622, P. 1176); Utah (1933, C. 7); Virginia (L. 1932, C. 102, p. 94); Wisconsin (L. 1931, C. 70; L. 1933, C. 372).

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935.

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No. 287

CAMILLE V. TREIGLE, *Appellant*, v. ACME HOMESTEAD ASSOCIATION, *Appellee*.

No. 288

CAMILLE V. TREIGLE, *Appellant*, v. THRIFT HOMESTEAD ASSOCIATION, *Appellee*.

No. 289

TREIGLE SASH FACTORY, INC., *Appellant*, v. CONSERVATIVE HOMESTEAD ASSOCIATION, *Appellee*.

No. 290

TREIGLE SASH FACTORY, INC., *Appellant*, v. UNION HOMESTEAD ASSOCIATION, *Appellee*.

No. 316

JOSEPH MITCHELL, *Appellant*, v. CONSERVATIVE HOMESTEAD ASSOCIATION, *Appellee*.

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APPEALS FROM THE SUPREME COURT OF LOUISIANA.

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## BRIEF ON BEHALF OF THE UNITED STATES BUILDING AND LOAN LEAGUE AS AMICUS CURIAE.

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C. CLINTON JAMES,
*Attorney for the United States Building and Loan League.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPEALS FROM THE SUPREME COURT OF LOUISIANA.

---

## BRIEF ON BEHALF OF THE UNITED STATES BUILDING AND LOAN LEAGUE AS AMICUS CURIAE.

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### STATEMENT.

The United States Building and Loan League is a national organization whose membership is composed of the

State Leagues of forty-eight (48) states and Hawaii and 4,257 individual associations, representing about 75 per cent of the total assets of the Building and Loan Associations in the United States.

According to the latest statistics contained in the Report of H. F. Cellarius, Secretary-Treasurer of the United States Building and Loan League, there are 10,920 associations, with 8,370,146 members and $6,450,424,392.00 in assets. (See Table I, Summary Table of Number of Associations, Total Membership and Total Assets of Building and Loan Associations, By States, 1934; and Table II, Mortgage Investments of Building and Loan Associations, 1933-1934.) These Tables are reproduced in the Appendix page 1.

The appellants attack certain sections (53, 54, 55 and 56) of Act 140 of 1932 (the Louisiana Building and Loan Code), on the ground of impairment of contract and deprivation of property without due process of law. The sections under attack change the time and method of payment of withdrawals in Louisiana associations.

This brief, filed as *amicus curiae,* is presented because a determination of the question here under consideration will affect the interests of the building and loan associations located in twenty states, which have enacted statutes affecting withdrawals from building and loan associations since the year 1930. In addition, substantial changes have been made, since that year, in the laws of fourteen other states. (See pages 11 to 23, Appendix of Brief on Behalf of Appellees.)

For a statement of the essential facts, the Court is respectfully referred to the Statement contained in appellants' Brief, pages 1 to 4.

## OPINIONS BELOW.

The opinions of the Supreme Court of the State of Louisiana in these cases are reported in 181 La., pages 941, 971, 972, 973, 974.

## STATUTES INVOLVED.

Act 140 of 1932 (Louisiana Laws, 1932, page 454), Sections 53, 54, 55 and 56, as set out in the Appendix of Appellants' Brief (pages 5 to 9).

## QUESTION PRESENTED.

The only question presented on these appeals is whether Sections 53, 54, 55 and 56 of Act 140 of 1932, are unconstitutional.

Appellants' contention is that the provisions of these Sections, which change the method of paying demands of withdrawing shareholders in building and loan associations and which amend some of the administrative features previously existing as to moneys to be used for withdrawals, declaration of dividends, etc., impair the obligations of contracts, divest said withdrawing shareholders of alleged vested rights and are, therefore, violative of Section 10 of Article 1 of the Constitution of the United States and Section 1 of the Fourteenth Amendment.

Appellants deny that the State of Louisiana has the right to formulate any new rules as to withdrawal privileges, etc., although they concede the quasi-public character of these institutions and the resultant power of state control and supervision.

The Supreme Court of Louisiana, in what we believe to be a notable statement of the principles for which the United States Building and Loan League has contended for many years, has approved the Louisiana legislation of 1932 as a proper exercise of the paramount police power of the state, and has decided that the arm and power of the state in the supervision and control of these institutions cannot be stayed by the claims of individual shareholders that their preexisting rights and relationships in these associations will be incidentally affected and modified.

## ARGUMENT.

It cannot be seriously argued that plaintiffs' rights were contractual.

No one can, by a conventional agreement, acquire a membership in a building and loan association. The relationship between a building and loan association and the members thereof is authorized and fixed by statute and cannot exist without a statute. Since this membership is wholly statutory, it can be changed at the will of the Legislature.

We particularly call the Court's attention to appellees' authorities on this point. See Appellees' Brief, Point IV, page 32. To hold that a member's subscription is contractual would make it necessary for this Court to overrule the very important case in the Supreme Court of Louisiana, *Conservative Homestead Association* v. *Dreyfous,* 175 La. 404. See Appellees' Brief, page 33. And we respectfully state that we hardly see how this Court could undertake to overrule, or even to disregard, this decision, since that case presents an authoritative interpretation and statement, by the Supreme Court of Louisiana, of the essentially statutory character of the rights of shareholders in building and loan associations in that State;—the interpretation of that state statute, by the highest court in that state, under the established jurisprudence of this Court, being binding here. *Louisville Gas & Electric Company* v. *Coleman,* 277 U. S. 32, 36; *Merchants' Bank* v. *Pennsylvania,* 167 U. S. 461, 462.

The Louisiana Legislature, in reference to the attribution of funds for withdrawals from associations, had originally left the matter to the discretion of the respective boards of directors, by the Louisiana statute of 1902; changed the rule on this subject in 1916; and goes back, in the 1932 Statute, to the original rule. See Appellees' Brief, pages 28 to 32.

Indeed, it would appear that the amendments in that regard and in the related matters complained of by appellants, amount to no more than purely administrative changes in

the rules for the government of these associations,—a matter surely within the power of the Legislature in the exercise of its duty of supervision and control of these quasi-public institutions, and with the wisdom of which this Court is not concerned.

As to the new method of payment of withdrawals, it does not represent a new and untried plan. The Louisiana statute brings to the building and loan shareholders of that state the benefit of legislation in other states substantially to the same effect and which has given general satisfaction. Similar statutes, changing the preexisting withdrawal rights of members in building and loan associations, have been adopted in the states of Alabama, California, Colorado, Florida, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Washington and West Virginia. See Appellees' Brief, Appendix, pages 11 to 23.

As in these other states, the Louisiana statute does not prevent or hamper, but on the contrary promotes, the right of withdrawal by liberalizing and extending the benefit of the withdrawal payments to a larger number of shareholders. The changes made relate substantially only to the time and method of payment, and the right of withdrawal is at all times furthered and protected.

We have no intention of repeating the comprehensive argument presented by the appellees herein. With that argument we agree; and we consider that there is no answer whatever, either to that part of the appellees' brief which deals with the statutory nature of the relationship between a member and his association (Appellees' Brief, page 32, Point IV.), or to the proposition that a building and loan association, like a bank, is a quasi-public institution, at all times subject to control of the Legislature through the police power (Appellees' Brief, page 6, Point I.).

It seems to us that the recognition of the power of the Legislature to meet, by adequate legislation, the needs of

building and loan associations and of their shareholders as new conditions arise in the future, is as essential to the future welfare of these associations, as is the recognition of the same doctrine of wise and continuing supervision and control for the growth, improvement and safety of commercial and savings banks.

We call the Court's attention to the fact that, if the appellants should prevail, it may mean the end of the legislative control and supervision of these quasi-public institutions; for, if the existing shareholder, either in a bank or in a building and loan association, has a so-called contract right which is beyond legislative control, then the Legislature is, for all time, powerless to bring about any change, no matter how desirable or necessary, if the same has the effect of modifying in any respect the rights of said shareholders,—a doctrine which may mean the end of all regulation and control of these institutions, creating a situation which this Court has characterized as "inconceivable". *Louisville and Nashville Company* v. *Mottley,* 219 U. S. 467, Appellees' Brief, page 17.

Building and loan associations, with their tremendous importance as promoters of thrift, their wide distribution over this country as the out-standing medium for the building and financing of homes, are reservoirs of billions of dollars, representing the savings of the poor homesteader and homeowner, and are no less public in character and subject to legislative control and supervision, than are insurance companies, railroads, commercial and savings banks and public utilities generally.

No one has ever thought that even a contract creditor of any of these institutions could prevent the exercise by the state of the paramount power of regulation. As stated by this Court, in the Mottley case, "contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract", or any shareholder relationship in any quasi-public institution, "can extend to the defeat of legitimate

government authority. * * * These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power * * * as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts", or shareholder relationships, "previously made between individuals or corporations is inconceivable."

Exactly the same rule applies to, and is decisive of, the present controversy, the reserve police power of the Louisiana Legislature in respect of building and loan associations as quasi-public institutions, being no less than the delegated power of Congress in reference to interstate commerce.

The United States Building and Loan League respectfully submits that this Court should affirm the judgments of the Supreme Court of Louisiana, which apply the doctrine established by this Court for the supervision and control of quasi-public institutions under the paramount police power of the state.

In closing, we cannot fail to notice that the appellants, although reiterating their displeasure with the statutory changes resulting from the 1932 Louisiana Statute, have neither controverted the fundamental propositions on which such legislation is based and justified, nor cited a single case questioning the public character of these associations and the resultant need for their complete legislative control and supervision.

It seems to us, when the appellants concede that building and loan associations, like railroads and insurance companies, are quasi-public institutions, there can be no denial of the application to those associations of the doctrine of the Mottley decision and other similar cases, under which no creditor or shareholder can stay the hand of the Legis-

lature or of Congress in the exercise of control and supervision in proper cases.

Although the matter of the regulation of building and loan associations is one strictly of intrastate business and state law, even Congress has recognized the quasi-public character of these institutions, and has specifically classified these associations with railroads, insurance and banking corporations, in exempting all these corporations, because of their public character, from the operation of the bankruptcy act (Act of Congress, February 11, 1932, C. 38, 47 Stat. Part 1, page 47.

The State of Louisiana has likewise classified these associations with other quasi-public institutions, in exempting them from the operation of its income tax law. Section 27, Act 21, 1934 (regular session) Louisiana, as amended by Section 1 of Act 21 of the Extraordinary Session of Louisiana Legislature held February 26, 1935.

It is submitted that the judgments of the Supreme Court of Louisiana in these related cases are correct, and should be affirmed by this Court.

Respectfully submitted,

C. CLINTON JAMES,
*Attorney for the United States Building and Loan League.*

# APPENDIX

## TABLE I

### SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

| | | No. of Assns. | Total Members | Total Assets |
|---|---|---|---|---|
| Alabama | State.. | 38 | 28,980 | $20,216,163 |
| | Federal.. | 8 | 374 | 296,529 |
| Total | | 46 | 29,354 | 20,512,692 |
| Arizona | State.. | 2 | 1,550 | 533,119 |
| Arkansas | State.. | 44 | 16,523 | 14,094,493 |
| | Federal.. | 23 | 1,833 | 1,998,619 |
| Total | | 67 | 18,356 | 16,093,112 |
| California | State.. | 111 | 315,332 | 296,027,109 |
| | Federal.. | 22 | 3,634 | 1,529,259 |
| Total | | 133 | 318,966 | 297,556,368 |
| Colorado | State.. | 49 | 47,267 | 38,257,475 |
| | Federal.. | 16 | 1,953 | 2,134,282 |
| Total | | 65 | 49,220 | 40,391,757 |
| Connecticut | State.. | 44 | 29,997 | 24,380,929 |
| | Federal.. | 5 | 326 | 180,388 |
| Total | | 49 | 30,323 | 24,561,317 |
| Delaware | State.. | 43 | 17,950 | 14,175,933 |
| District of Columbia | State.. | 28 | 109,844 | 97,088,000 |
| Florida | State.. | 57 | 9,500 | 9,664,703 |
| | Federal.. | 36 | 2,929 | 1,460,755 |
| Total | | 93 | 12,429 | 11,125,458 |
| Georgia | State.. | 39 | 16,326 | 6,991,293 |
| | Federal.. | 15 | 2,538 | 1,025,826 |
| Total | | 54 | 18,864 | 8,017,119 |
| Idaho | State.. | 12 | 9,550 | 5,302,107 |
| | Federal.. | 2 | 1,635 | 477,785 |
| Total | | 14 | 11,185 | 5,779,892 |
| Illinois | State.. | 858 | 772,500 | 389,711,234 |
| | Federal.. | 42 | 8,505 | 8,706,560 |
| Total | | 900 | 781,005 | 398,417,794 |
| Indiana | State.. | 376 | 291,320 | 215,780,915 |
| | Federal.. | 20 | 2,294 | 1,276,074 |
| Total | | 396 | 293,614 | 217,056,989 |
| Iowa | State.. | 69 | 57,465 | 39,059,883 |
| | Federal.. | 21 | 2,034 | 1,008,297 |
| Total | | 90 | 59,499 | 40,068,180 |
| Kansas | State.. | 145 | 131,432 | 91,398,664 |
| | Federal.. | 12 | 1,192 | 415,852 |
| Total | | 157 | 132,624 | 91,814,516 |
| Kentucky | State.. | 165 | 162,000 | 106,004,054 |
| | Federal.. | 17 | 16,834 | 16,751,854 |
| Total | | 182 | 178,834 | 122,755,908 |
| Louisiana | State.. | 96 | 140,802 | 117,155,538 |
| | Federal.. | 11 | 4,073 | 9,622,979 |
| Total | | 107 | 144,875 | 126,778,517 |
| Maine | State.. | 36 | 24,248 | 23,473,035 |
| Maryland | State.. | 950 | 263,000 | 171,250,000 |
| | Federal.. | 1 | 481 | 566,665 |
| Total | | 951 | 263,481 | 171,816,665 |
| Massachusetts | State.. | 223 | 409,960 | 478,435,840 |
| Michigan | State.. | 67 | 176,523 | 132,955,913 |
| | Federal.. | 9 | 758 | 347,493 |
| Total | | 76 | 177,281 | 133,303,406 |

TABLE I (*Continued*)

SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

| | | No. of Assns. | Total Members | Total Assets |
|---|---|---|---|---|
| Minnesota | State.. | 66 | 66,577 | 33,325,488 |
| | Federal.. | 16 | 4,937 | 2,149,873 |
| Total | | 82 | 71,514 | 35,475,361 |
| Mississippi | State.. | 34 | 5,000 | 6,213,615 |
| | Federal.. | 14 | 1,862 | 698,420 |
| Total | | 48 | 6,862 | 6,912,035 |
| Missouri | State.. | 219 | 175,165 | 149,573,559 |
| | Federal.. | 23 | 6,507 | 5,360,140 |
| Total | | 242 | 181,672 | 154,933,699 |
| Montana | State.. | 27 | 24,900 | 12,578,957 |
| Nebraska | State.. | 83 | 160,400 | 101,641,637 |
| | Federal.. | 5 | 474 | 142,350 |
| Total | | 88 | 160,874 | 101,783,987 |
| Nevada | State.. | 5 | 1,300 | 1,010,682 |
| New Hampshire | State.. | 29 | 16,107 | 13,907,592 |
| | Federal.. | 1 | 111 | 167,612 |
| Total | | 30 | 16,218 | 14,075,204 |
| New Jersey | State.. | 1,522 | 793,091 | 1,034,011,264 |
| New Mexico | State.. | 15 | 3,660 | 3,845,537 |
| | Federal.. | 9 | 467 | 148,523 |
| Total | | 24 | 4,127 | 3,994,060 |
| New York | State.. | 270 | 434,637 | 344,619,036 |
| | Federal.. | 22 | 19,480 | 19,812,170 |
| Total | | 292 | 454,126 | 364,431,206 |
| North Carolina | State.. | 197 | 72,719 | 60,603,002 |
| | Federal.. | 4 | 651 | 451,786 |
| Total | | 201 | 73,370 | 61,054,788 |
| North Dakota | State.. | 22 | 17,583 | 9,964,420 |
| | Federal.. | 3 | 121 | 88,835 |
| Total | | 25 | 17,704 | 10,053,255 |
| Ohio | State.. | 716 | 1,770,000 | 790,830,361 |
| | Federal.. | 15 | 6,211 | 7,185,142 |
| Total | | 731 | 1,776,211 | 798,015,503 |
| Oklahoma | State.. | 86 | 68,400 | 54,731,213 |
| | Federal.. | 15 | 10,787 | 17,266,649 |
| Total | | 101 | 79,187 | 71,997,862 |
| Oregon | State.. | 22 | 37,500 | 17,480,491 |
| | Federal.. | 19 | 2,075 | 1,783,904 |
| Total | | 41 | 39,575 | 19,264,395 |
| Pennsylvania | State.. | 2,883 | 775,498 | 862,650,359 |
| | Federal.. | 11 | 1,364 | 704,356 |
| Total | | 2,894 | 776,862 | 863,354,715 |
| Rhode Island | State.. | 8 | 44,016 | 32,449,964 |
| South Carolina | State.. | 79 | 16,000 | 16,067,219 |
| | Federal.. | 12 | 851 | 415,588 |
| Total | | 91 | 16,851 | 16,482,807 |
| South Dakota | State.. | 19 | 6,500 | 3,987,617 |
| | Federal.. | 3 | 1,229 | 729,009 |
| Total | | 22 | 7,729 | 4,716,626 |
| Tennessee | State.. | 36 | 25,640 | 17,825,343 |
| | Federal.. | 23 | 2,380 | 1,015,054 |
| Total | | 59 | 28,020 | 18,840,397 |

TABLE I (*Continued*)

SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

| | | No. of Assns. | Total Members | Total Assets |
|---|---|---|---|---|
| Texas | State.. | 130 | 123,908 | 82,886,876 |
| | Federal.. | 54 | 4,666 | 3,556,150 |
| Total | | 184 | 128,574 | 86,443,026 |
| Utah | State.. | 20 | 50,400 | 32,784,613 |
| | Federal.. | 1 | 35 | 12,401 |
| Total | | 21 | 50,435 | 32,797,014 |
| Vermont | State.. | 14 | 5,458 | 5,160,637 |
| Virginia | State.. | 87 | 51,330 | 46,604,489 |
| | Federal.. | 4 | 273 | 60,519 |
| Total | | 91 | 51,603 | 46,665,008 |
| Washington | State.. | 52 | 149,861 | 49,995,586 |
| | Federal.. | 21 | 22,507 | 7,692,001 |
| Total | | 73 | 172,368 | 57,687,587 |
| Wisconsin. | State.. | 183 | 212,159 | 211,118,603 |
| | Federal.. | 21 | 1,719 | 1,300,498 |
| Total | | 204 | 213,878 | 212,419,101 |
| West Virginia | State.. | 60 | 47,000 | 31,443,080 |
| | Federal.. | 9 | 3,252 | 848,303 |
| Total | | 69 | 50,252 | 32,291,383 |
| Wyoming | State.. | 7 | 12,000 | 6,343,820 |
| | Federal.. | 1 | 327 | 269,875 |
| Total | | 8 | 12,327 | 6,613,695 |
| Hawaii | State.. | 10 | 27,500 | 5,134,925 |
| | Federal.. | 1 | 80 | 19,632 |
| Total | | 11 | 27,580 | 5,154,557 |
| GRAND TOTAL | | 10,920 | 8,370,146 | 6,450,424,392 |

TABLE II

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

| States | | Mortgage Loans Outstanding 1933 | Mortgage Loans Outstanding 1934 |
|---|---|---|---|
| Alabama | State.. | $14,963,727 | $8,892,393 |
| | Federal.. | ..... | 164,063 |
| Total | ..... | ..... | 9,056,456 |
| Arizona | State.. | 420,000 | 257,145 |
| Arkansas | State.. | 17,495,436 | 8,081,153 |
| | Federal.. | ..... | 1,415,794 |
| Total | ..... | ..... | 9,496,947 |
| California | State.. | 232,428,452 | 168,458,543 |
| | Federal.. | ..... | 1,019,218 |
| Total | ..... | ..... | 169,477,761 |
| Colorado | State.. | 24,906,062 | 22,495,000 |
| | Federal.. | ..... | 1,475,875 |
| Total | ..... | ..... | 23,970,875 |
| Connecticut | State.. | 22,642,147 | 20,961,042 |
| | Federal.. | ..... | 142,682 |
| Total | ..... | ..... | 21,103,724 |
| Delaware | State.. | 12,564,895 | 11,232,911 |
| District of Columbia | State.. | 83,311,000 | 87,172,000 |
| Florida | State.. | 6,006,642 | 3,516,068 |
| | Federal.. | ..... | 1,085,872 |
| Total | ..... | ..... | 4,601,940 |
| Georgia | State.. | 5,728,427 | 5,592,324 |
| | Federal.. | ..... | 874,463 |
| Total | ..... | ..... | 6,466,787 |
| Idaho | State.. | 4,142,535 | 3,366,101 |
| | Federal.. | ..... | 368,784 |
| Total | ..... | ..... | 3,734,885 |
| Illinois | State.. | 310,074,000 | 278,379,583 |
| | Federal.. | ..... | 6,711,623 |
| Total | ..... | ..... | 285,091,206 |
| Indiana | State.. | 196,713,421 | 147,838,857 |
| | Federal | ..... | 1,068,544 |
| Total | ..... | ..... | 148,907,401 |
| Iowa | State.. | 34,334,500 | 28,927,176 |
| | Federal.. | ..... | 792,956 |
| Total | ..... | ..... | 29,720,132 |
| Kansas | State.. | 76,178,598 | 51,167,596 |
| | Federal.. | ..... | 290,431 |
| Total | ..... | ..... | 51,458,027 |
| Kentucky | State.. | 100,352,563 | 90,494,871 |
| | Federal.. | ..... | 11,300,036 |
| Total | ..... | ..... | 101,794,907 |

TABLE II (*Continued*)

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

| States | | Mortgage Loans Outstanding 1933 | Mortgage Loans Outstanding 1934 |
|---|---|---|---|
| Louisiana | State.. | $102,856,245 | $70,224,394 |
| | Federal.. | ..... | 5,904,636 |
| Total | ..... | ..... | 76,129,030 |
| Maine | State.. | 21,063,337 | 20,246,965 |
| Maryland | State.. | 146,000,000 | 128,500,000 |
| | Federal.. | ..... | 420,830 |
| Total | ..... | ..... | 128,920,830 |
| Massachusetts | State.. | 406,400,260 | 375,726,775 |
| Michigan | State.. | 101,623,146 | 80,486,866 |
| | Federal.. | ..... | 218,612 |
| Total | ..... | ..... | 80,705,478 |
| Minnesota | State.. | 30,827,410 | 22,852,652 |
| | Federal.. | ..... | 1,145,263 |
| Total | ..... | ..... | 23,997,915 |
| Mississippi | State.. | 8,351,246 | 4,091,005 |
| | Federal.. | ..... | 566,992 |
| Total | ..... | ..... | 4,657,997 |
| Missouri | State.. | 130,264,177 | 90,277,272 |
| | Federal.. | ..... | 3,546,171 |
| Total | ..... | ..... | 93,823,443 |
| Montana | State.. | 12,346,115 | 8,960,062 |
| Nebraska | State.. | 84,454,842 | 71,832,954 |
| | Federal.. | ..... | 109,193 |
| Total | ..... | ..... | 71,942,147 |
| Nevada | State.. | 872,912 | 568,329 |
| New Hampshire | State.. | 12,806,264 | 12,607,385 |
| | Federal.. | ..... | 159,950 |
| Total | ..... | ..... | 12,767,335 |
| New Jersey | State.. | 798,960,365 | 667,813,611 |
| New Mexico | State.. | 3,426,739 | 2,745,678 |
| | Federal.. | ..... | 86,171 |
| Total | ..... | ..... | 2,831,849 |
| New York | State.. | 332,962,466 | 262,555,107 |
| | Federal.. | ..... | 14,148,442 |
| Total | ..... | ..... | 276,703,549 |
| North Carolina | State.. | 56,285,134 | 47,246,203 |
| | Federal.. | ..... | 325,404 |
| Total | ..... | ..... | 47,571,607 |
| North Dakota | State.. | 9,375,139 | 6,449,626 |
| | Federal.. | ..... | 58,455 |
| Total | ..... | ..... | 6,508,081 |
| Ohio | State.. | 749,559,478 | 599,723,372 |
| | Federal.. | ..... | 5,808,921 |
| Total | ..... | ..... | 605,532,293 |
| Oklahoma | State.. | 73,493,316 | 29,830,968 |
| | Federal.. | ..... | 9,014,824 |
| Total | ..... | ..... | 38,845,792 |

TABLE II (*Continued*)

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

| States | | Mortgage Loans Outstanding 1933 | Mortgage Loans Outstanding 1934 |
|---|---|---|---|
| Oregon | State.. | $13,968,996 | $12,434,405 |
| | Federal.. | ..... | 1,209,911 |
| Total | ..... | ..... | 13,644,316 |
| Pennsylvania | State.. | 714,707,770 | 610,218,132 |
| | Federal.. | ..... | 500,426 |
| Total | ..... | ..... | 610,718,558 |
| Rhode Island | State.. | 28,015,813 | 24,086,623 |
| South Carolina | State.. | 15,950,000 | 11,863,873 |
| | Federal.. | ..... | 374,845 |
| Total | ..... | ..... | 12,238,718 |
| South Dakota | State.. | 4,613,055 | 2,649,374 |
| | Federal.. | ..... | 513,072 |
| Total | ..... | ..... | 3,162,446 |
| Tennessee | State.. | 13,581,171 | 11,163,145 |
| | Federal.. | ..... | 822,262 |
| Total | ..... | ..... | 11,985,407 |
| Texas | State.. | 76,960,311 | 51,595,499 |
| | Federal.. | ..... | 2,187,899 |
| Total | ..... | ..... | 53,783,398 |
| Utah | State.. | 14,694,201 | 15,383,866 |
| | Federal.. | ..... | 9,848 |
| Total | ..... | ..... | 15,393,714 |
| Vermont | State.. | 4,722,729 | 4,489,109 |
| Virginia | State.. | 44,018,097 | 35,308,887 |
| | Federal.. | ..... | 49,207 |
| Total | ..... | ..... | 35,358,094 |
| Washington | State.. | 42,792,203 | 27,775,994 |
| | Federal.. | ..... | 5,752,043 |
| Total | ..... | ..... | 33,528,037 |
| West Virginia | State.. | 24,304,732 | 21,223,487 |
| | Federal.. | ..... | 630,865 |
| Total | ..... | ..... | 21,854,352 |
| Wisconsin | State.. | 186,076,388 | 129,765,782 |
| | Federal.. | ..... | 877,677 |
| Total | ..... | ..... | 130,643,459 |
| Wyoming | State.. | 4,849,641 | 4,823,762 |
| | Federal.. | ..... | 159,924 |
| Total | ..... | ..... | 4,983,686 |
| Hawaii | State.. | 4,213,862 | 3,851,857 |
| | Federal.. | ..... | 17,279 |
| Total | ..... | ..... | 3,869,136 |
| GRAND TOTAL | ..... | $5,417,659,965 | $4,487,535,245 |

# APPENDIX.

Act of Congress, February 11, 1932, chapter 38, 47 Stat. Part 1, page 47.

[PUBLIC—No. 27—72D CONGRESS]

[S. 2199]

AN ACT

Exempting building and loan associations from being adjudged bankrupts.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 4 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended (U. S. C., title 11, sec. 22), is amended to read as follows:

"SEC. 4. Who may become bankrupts.—(a) Any person, except a municipal, railroad, insurance, banking corporation, or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt.

"(b) Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation (except a municipal, railroad, insurance, or banking corporation, or a building and loan association) owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

"The bankruptcy of a corporation or association shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States."

Approved, February 11, 1932.

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FEB 28 1936

CHARLES ELMORE CROPLEY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

## Nos. 287, 288, 289, 290 and 316

No. 287 CAMILLE V. TREIGLE, Appellant, v. ACME HOMESTEAD ASSOCIATION, Appellee.

No. 288 CAMILLE V. TREIGLE, Appellant, v. THRIFT HOMESTEAD ASSOCIATION, Appellee.

No. 289 TREIGLE SASH FACTORY, INC., Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

No. 290 TREIGLE SASH FACTORY, INC., Appellant, v. UNION HOMESTEAD ASSOCIATION, Appellee.

No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

## PETITION OF APPELLEES FOR REHEARING.

DELVAILLE H. THEARD,
LOUIS H. YARRUT,
HARRY EMMET McENERNY,
AZZO J. PLOUGH,
PERCIVAL H. STERN,
ELIAS GOLDSTEIN,
JOSEPH W. CARROLL,
HENRY G. McCALL,
LEIGH CARROLL,
ROBERT LEGIER,
WILLIAM JOHN WAGUESPACK, JR.,
SOL WEISS,
ALFRED D. DANZIGER,
FRANK J. STICH,
Attorneys for Appellees.

Andrew Printing Co., Inc., 430-32 Chartres, N. O. La.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

## Nos. 287, 288, 289, 290 and 316

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No. 290 TREIGLE SASH FACTORY, INC., Appellant, v. UNION HOMESTEAD ASSOCIATION, Appellee.

No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

## PETITION OF APPELLEES FOR REHEARING.

Come now the Acme Homestead Association, Thrift Homestead Association, Union Homestead Association, and Conservative Homestead Association, appellees in the above entitled causes, and present this, their petition for rehearing, and in support thereof, respectfully show:

In holding that the challenged sections of the 1932 statute are illegal, because this Court considers that they deal only with the private internal rights of building and loan shareholders and were enacted without regard to any

discernible public purpose, this Honorable Court has mistaken the true character of the rights of the members of these associations (exactly analogous to the depositors in mutual savings banks) and the objective and public purpose of the legislation under consideration.

**Rights of All Building and Loan Shareholders Being At All Times Fundamentally Mutual, No Preferential Right Acquired By Applicant for Withdrawal, Who Remains At All Times a Shareholder.**

The decision in this case is erroneous in holding that the new statute changing the method of withdrawal deprives an applicant for withdrawal of any preferential rights.

When we consider that the cardinal principle of building and loan associations is mutuality, and that there is no device known to the law of Louisiana through which a member in such a mutual association can ever obtain a preference over any other member, it is clear that the 1916 Louisiana statute providing for the payment of withdrawal applications in the order of filing, in effect only indicated the order of payment which the legislature then considered proper, and did not create, and never was intended to create, any new or preferential right in favor of any applicant over and against the other members of the association.

The status of the applicant as a shareholder did not change merely because he indicated his intention to withdraw from the association; and, as long as his application

was unpaid, he remained a shareholder, like all other shareholders, his status like theirs being at all times subject to regulation and control under the continuing police power of the State.

The legislature in providing at a later date for certain changes in the order and method of payment of withdrawal applications, did not, therefore, affect any special property right of the applicant; for the only difference between the applicant and the other shareholders, was that he desired to withdraw while they were willing to continue their membership, at all times identical, in the association.

As the plaintiffs on the withdrawal list were at all times shareholders and enjoyed no special or accrued rights on that account, they cannot complain that the new statute has deprived them of any property.

It must be remembered that all the associations now before the court are solvent, going concerns; and that the changes in method and order of payment, as will be hereinafter shown, are essentially mutual, fundamentally conform to the basic attributes of building and loan, and deprive the applicants of no property rights.

**No Private Shareholders' Rights in Building and Loan Associations.**

Building and loan associations have no private shareholders, but, like mutual savings banks and mutual life insurance companies, are owned by the members of the public who invest in them; and this creates a quasi-public relation-

ship at all times subject to police power regulation and control.

The decision in these cases is erroneous in that it is based on the mistaken idea that the statute under attack relates to the rights of private stockholders in their relationship *inter sese;* whereas, the truth is that building and loan associations, exactly like mutual savings banks and mutual life insurance companies, are strictly public institutions, with no private stockholders whatsoever.

No one will deny that mutual savings banks and other similar institutions are quasi-public, and that the rights of their depositors or members are always matters of public concern, affected with a public interest, and subject to regulation through a reasonable exercise of the police power.

These principles should suffice to sustain the validity of the statutes here under attack; for in the discharge of its obligations to protect the investments of the public in these institutions, the State is under the duty of enacting proper and reasonable laws, not only as to the manner in which the funds of the members shall be administered and protected, but also as to the method of withdrawing these funds; it being essential in the public interest that such withdrawals be effectuated only in the manner least disturbing and hurtful to the normal functioning and continued existence of these State instrumentalities.

**The Sections Under Attack Constituted a Reasonable Exercise of the Police Power for a Proper Public Purpose.**

There was an obvious public purpose in the 1932 Louisiana legislation relaxing the rigid 1916 provisions as to the use of certain funds for the payment of withdrawals, by the substitution of a new rule which gave discretion to the directors so as to conserve the general resources and increase the cash reserves of individual associations. The associations, thus enabled to use if necessary the whole of their cash receipts for primary corporate needs and obligations, were indubitably strengthened as business units and made better able to withstand adverse economic conditions. In thus protecting each building and loan unit, the Legislature was obviously working for the ultimate protection, safety and payment of the investment of each individual member of such unit.

It would be most regrettable if the sections under attack are to be stricken down by the decision in these cases; for the value and public purpose of this new legislation have already been demonstrated by actual experience in Louisiana, where these sections have been in actual operation for more than three years. The fact that numerous building and loan associations in Louisiana, which were in distress before this legislation became effective, have now successfully passed through the depression, and that the investments in thirty-nine of these Louisiana institutions are now insured by The Federal Savings and Loan Insurance Corporation (an agency of the United States Government) is due entirely to the 1932 statute, which made it possible

for these associations to conserve their resources and to create reserves as provided by the new statute, with the gratifying result that the shares of every investor in these insured associations is now worth one hundred cents on the dollar and is now withdrawable on demand.

If a further test of the reasonableness and public purpose of these sections is needed, it will be found in the fact that, out of approximately one hundred seventy-five thousand shareholders in these associations in the State of Louisiana, only eight of them ever objected to these new laws and brought suits to attack them.

Finally, the reasonableness and propriety of this new building and loan legislation is most persuasively suggested by reference to numerous recent legislative enactments of other States indicating that these other States undertook to solve their building and loan problems by statutes closely resembling in many respects the provisions of the Louisiana 1932 Act. This legislation from other States clearly indicates that there is nothing capricious or arbitrary in the provisions of the Louisiana statute, but that the Louisiana statute approaches, if indeed it does not exactly reflect, the norm of legislation considered to be appropriate as a solvent for current building and loan needs. This evidence is ample to sustain the validity of the Louisiana statute as a reasonable and proper exercise of the police power, enacted for a well defined and discernible public purpose.

There is likewise a clear public purpose in those provisions of the 1932 statute which formulate a new method of paying withdrawals. The Legislature realized that

many thousands of distressed citizens were trying unsuccessfully to withdraw their funds from building and loan associations, which were unable to meet these demands in full.

No one would question the right of the Legislature to provide for partial payments of deposits in mutual savings banks, when economic conditions were such as to make it impossible for these banks, although solvent, to pay their depositors in full.

Exactly the same principle is applicable to building and loan associations. To avert widespread distress, the Legislature modified the existing statute by formulating a new form of payment according to which, in any association, out of the amount of funds at that time available for the payment of withdrawals, a larger number of applicants could be paid, at least in part, and each for a substantial amount.

This Honorable Court is in error in characterizing this new rule as an attempt to change the private rights of association shareholders as such. The error of the Court's view, lies in the failure to realize that there are no private rights, and no shareholders in the usual sense of that term, in mutual building and loan associations; and that their so-called shareholders are the members of the public who (exactly as depositors in mutual savings banks) have created, by their investment on a mutual basis in these associations, a common fund for the making of home loans.

A doctrine which would deny to the Legislature the right of regulating the relationship of millions of this type

of investors in quasi-public institutions would be a most dangerous one; for it would overlook the interest of the public in these institutions. If the Legislature is denied the right to control the relationship of the members in mutual building and loan associations, then it can not assert the right to regulate the substantially similar relationship of depositors in mutual savings banks.

This doctrine has so surprised the supervising authorities who with the Legislatures have for so many years wisely controlled member-and depositor-relationships in these quasi-public institutions in the several States, that many of the State Supervisors and Commissioners have advised us that they will, through the respective Attorneys General of their States, join with the present petitioners in asking for a rehearing, to the end that the error of this Court in classifying, as a private relationship, the deposits and memberships in mutual savings banks and in mutual building and loan associations in this country may be corrected.

## The Sections Under Attack Constitute Emergency Legislation, and Should Be Sustained as Such.

The opinion indicates that these sections might have been sustained if they had been, by their text, limited to a period of emergency and been temporary and conditional.

It is true that the sections are not limited to any definite period and are not in terms characterized as emergency legislation.

But inherently and in substance these sections, applicable only when associations are in a frozen or precarious financial condition, constitute emergency legislation strictly, and manifestly they prescribe the special rules to be applied to associations during the indicated periods of stress.

No matter what may be the reason for the delay, when an association is unable to pay withdrawals within the normal sixty day period fixed by the Statute, the suspicions and anxieties resulting from its inability to pay off its investors within a reasonable time create a condition of real emergency and crisis. The sections under attack apply precisely and only to these periods of stress and emergency, and are in reality emergency provisions; and, so treated and considered by the Court, the validity of these sections should have been sustained as a proper exercise of the police power.

**The Decision Will Make It Impossible for Many Mutual Building and Loan Associations to Continue in Business.**

The decision herein will mean the liquidation of many solvent building and loan associations.

Under the decision the rights of individual members in any one association must be fixed by the statute in force at the date when the individuals joined the association.

Where during the existence of an association, a Legislature has passed several different statutes, it becomes a physical impossibility for that association to observe the

several, and necessarily different, statutes applicable to its several members. If different rules under different statutes must be contemporaneously observed in any one association as to allocation of funds, and especially if different statutory provisions must be complied with at the same time in each association as to the method of paying withdrawals, so that each member will be accorded the benefit of the particular statutory privileges in force when his membership in the association started, there must inevitably result a condition, not only indescribably confusing, but impossible of practical achievement or realization.

Thus in Louisiana, every association having a withdrawal list will be under the duty of trying to enforce the different rules prescribed by the three Louisiana statutes; and, notwithstanding the cardinal principle of mutual associations that the rights of all the members are identical and that all funds are commingled and administered for their equal benefit, the Louisiana associations will be under the duty of trying to set up three varying systems of bookkeeping and three different plans of withdrawal, in order to preserve the three types of privileges which, the Court says, are each immutable and must be considered as continuing to exist as of the date when each member joined the association either under the law of 1902, or the law of 1916, or the law of 1932.

It is perfectly evident that this would not be a workable plan, and since these associations could not refuse to observe the law, they would be compelled to go out of business.

In fact, unless the Legislature can retroactively regulate existing membership rights, no association can ever survive any basic change made in a regulatory statute; and therefore every time the Legislature enacts a basic amendment to the State building and loan statute, every association in that State will have to liquidate.

For the foregoing reasons, it is respectfully urged that this petition for rehearing be granted, and that the judgment of the Supreme Court of Louisiana in the above entitled causes be, upon further consideration, affirmed.

Respectfully submitted,

DELVAILLE H. THEARD,
LOUIS H. YARRUT,
HARRY EMMET McENERNY,
AZZO J. PLOUGH,
PERCIVAL H. STERN,
ELIAS GOLDSTEIN,
JOSEPH W. CARROLL,
HENRY G. McCALL,
LEIGH CARROLL,
ROBERT LEGIER,
WILLIAM JOHN WAGUESPACK, JR.,
SOL WEISS,
ALFRED D. DANZIGER,
FRANK J. STICH,

Attorneys for Appellees.

We, the undersigned, of counsel for the above appellees, petitioners for rehearing, do hereby certify that the foregoing petition for a rehearing of the above entitled causes is presented in good faith and not for delay.

DELVAILLE H. THEARD,
LOUIS H. YARRUT,
HARRY EMMET McENERNY,
AZZO J. PLOUGH,
PERCIVAL H. STERN,
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WILLIAM JOHN WAGUESPACK, JR.,
SOL WEISS,
ALFRED D. DANZIGER,
FRANK J. STICH,

Attorneys for Appellees.

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Office Supreme Court
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# Supreme Court of the United States.

OCTOBER TERM, 1935.

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No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

---

**Petition of Philip Lutz, Jr., Attorney General of the State of Indiana and Earl C. Bucher, Supervisor of Building and Loan Division of the Department of Financial Institutions of the State of Indiana; Otto Kerner, Attorney General of the State of Illinois and Poyntelle Downing, Supervisor of Building and Loan Associations of the State of Illinois; Edward L. O'Connor, Attorney General of the State of Iowa and C. W. Storms, Auditor of State of the State of Iowa; Clarence V. Beck, Attorney General of the State of Kansas and L. E. Roush, Supervisor of Building and Loan Associations of the State of Kansas; Gaston L. Porterie, Attorney General of the State of Louisiana and J. S. Brock, Bank Commissioner of the State of Louisiana; Roy McKittrick, Attorney General of the State of Missouri and Ira A. McBride, Supervisor of Bureau of Building and Loan Supervision of the State of Missouri; Dan C. Boney, Insurance Commissioner of the State of North Carolina; Howard C. Johnson, Banking Commissioner of the State of Oklahoma; James E. Finnegan, Attorney General of the State of Wisconsin and C. P. Diggles, Supervisor, Building and Loan Division of Banking Department of State of Wisconsin, for rehearing.**

---

JOHN WARREN,
Counsel for above named Petitioners.

---

W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

# Supreme Court of the United States

**OCTOBER TERM, 1935.**

## Nos. 287, 288, 289, 290 and 316

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## PETITION FOR REHEARING.

Come now Philip Lutz, Jr., Attorney General of the State of Indiana and Earl C. Bucher, Supervisor of Building and Loan Division of the Department of Financial Institutions of the State of Indiana; Otto Kerner, Attorney General of the State of Illinois and Poyntelle Downing, Supervisor of Building and Loan Associations of the State of Illinois; Edward L. O'Connor, Attorney General of the State of Iowa and C. W. Storms, Auditor of State of the State of Iowa; Clarence V. Beck, Attorney General of the State of Kansas and L. E. Roush, Supervisor of Building and Loan Associations of the State of Kansas; Gaston L. Porterie, Attorney General of the State of Louisiana and J. S. Brock, Bank Commissioner of the State of Louisiana;

Roy McKittrick, Attorney General of the State of Missouri and Ira A. McBride, Supervisor of Bureau of Building and Loan Supervision of the State of Missouri; Dan C. Boney, Insurance Commissioner of the State of North Carolina; Howard C. Johnson, Banking Commissioner of the State of Oklahoma; James E. Finnegan, Attorney General of the State of Wisconsin and C. P. Diggles, Supervisor, Building and Loan Division of Banking Department of State of Wisconsin, and present this, their petition for a rehearing of the above entitled causes, and, in support thereof, respectfully show:

1. This Honorable Court's decision in these causes renders impossible the future effective regulation of building and loan associations in the States represented by your petitioners, who are charged with the enforcement of statutes concerning, and the regulation of, such associations in their respective states. It deprives these, and all other States, of their police power to legislate on the subject of withdrawals so as to continue in operation such building and loan associations as exist at the time of such further legislation.

2. The said opinion lays down a rule of law that makes impossible the operation of building and loan associations after any amendment of the statute regulating such association in any fundamental respect, and will force the liquidation of many existing solvent associations which have disbursed large sums under existing amendatory legislation in violation of, what the opinion holds to be, vested contractual rights of members holding shares when the statute was amended.

3. The opinion lays down a rule of law which as a practical matter makes it impossible for associations to continue in business after amendment of the withdrawal statute of their States. As a result of this decision, shareholders in Louisiana who acquired their shares prior to

the 1932 statute challenged in these causes, have a contractual right to withdraw in accordance with the statute (or perhaps the by-laws), in force at the time of their subscriptions for shares, and shareholders who acquired their shares after the 1932 statute have contractual rights to withdraw and be paid in accordance with that statute. It is probable that in the future, in a solvent association of that State, applications for withdrawals will be filed by the former class of shareholders and unpaid for sixty days, which exceed in amount one-half of the receipts of the association in any month, and that in the same month there will be on file and unpaid for sixty days, applications for withdrawal by those to whom shares were issued after the enactment of the 1932 statute, in an amount equal to that of the former class. It is also probable that the order of filing of such notices will vary, some of the latter class preceding some of the former class. Assuming the available funds in a given month (at least one-half of receipts) to be $10,000.00 and the withdrawals of each class to be $20,000.00, it is apparent that it would be impossible for the association to reconcile and accommodate such slashing legal claims to the same fund or fulfil its obligation to one class or any of the class, in accordance with its vested contractual rights, without violating its contract obligations to the other, hence liquidation must ensue.

4. If the opinion holds that withdrawal is a vested contractual right acquired from the by-laws, it will have set back the social service of these institutions to the times preceding the start of this century. Withdrawal was there, a matter of private contract, being regulated by by-law provisions in each association. It is an historical fact that the appeal of the building and loan plan to the poor, who could save but little at a time, was seized upon by promoters who, calling their associations mutual and attempting to similarize their outward appearance to that of the local mutual associations, by high pressure salesmanship

which concealed the harsh terms of contracts, induced many poor people of various States to invest and lose their savings.

Common features of the withdrawal rights under such by-law contracts were (a) an absolute prohibition against withdrawal or a prohibition against withdrawal before a stated number of years, (b) the forfeiture of all savings in the event of a delinquency for a stated period, (c) high membership and withdrawal fees, paid to salesmen and officers and paid out of the first savings of the member so that the first ten or twelve months' dues were used for such purpose, the members so saving getting no credit for such savings, (d) forfeiture of profits credited to such shares and, frequently, a deduction for an expense fund which substantially impaired the savings being repaid.

The situation was akin to that then obtaining in the insurance business, which resulted in the enactment by the various States of legislation prescribing the language of policies, and, for the same reasons which motivated States to so legislate, they likewise enacted legislation on the subject of withdrawal to protect the savings of their citizens and to force mutual and local operation of building and loan associations for the benefit of the shareholders and drive out of their respective States the nationally operated associations, which were, while mutual in name, operated for the benefit of the management, and chiefly responsible for unsocial withdrawal practices.

Such statutes, with many limitations and restrictions to effectuate and safeguard the withdrawal privilege, accomplished their objective at that time and forced the nationally operated associations out of business, insured the safety and profit of savings in truly mutual local associations and the prompt payment of withdrawals, in contemplation of real estate and employment conditions at that time. As different economic conditions developed the States amended their withdrawal statutes from time to

time to meet such conditions and to preserve equality and mutuality amongst members of associations.

The opinion in these causes recognizes the right of the States to regulate building and loan associations under the police power but enunciates a view that withdrawal is a matter of private contract between the members *inter sese* and is not a proper public matter permitting regulation under such power. We respectfully submit that this is error and that as shown above the States have properly legislated upon this subject as an exercise of the police power, for the purpose of protecting their citizens and developing these institutions of community thrift and home finance as social and economic factors and that it has been universally held that building and loan associations are subject to regulation by the States under their inherent police power and, likewise, that under such power, statutes regulating the withdrawal privilege evidence a public policy which can neither be waived nor contracted away. They are police regulations in which no one has a vested right and which may be repealed or modified at the will of the State.

5. Your petitioners most respectfully submit that it is impossible for them to determine from the opinion herein whether the vested contractual right stated, therein acquired by a member at the time of his subscription for shares, is acquired by virtue of the statute then in force, or by virtue of the by-laws then in force. If it be the latter, then we must humbly submit that the Court has erred, for by-laws, which in this case differed from the statute in force at the time of the subscription for shares, could not give rights to members then subscribing, for by-laws cannot be in derogatioon of the statute, and when the State has legislated under its police power upon the subject of withdrawals, such legislation controls the privilege and nullifies any prior by-law provisions upon the subject. Thereafter, withdrawal is a privilege flowing

from such statute. This being the undoubted law, no contractual rights, under prior enacted by-laws, can be given to a member subscribing for shares while such statute is in force, where such by-laws do not accord with the statute or under by-laws then enacted which do accord with the statute, for the privilege exists by virtue of the statute alone even though there be no by-law on the subject. To otherwise hold would enable parties to contract in total disregard of the statute and thus oust the State of its right and ability to exercise its police power. And a by-law repeating the statute, while informative to members, is a nullity, and such a by-law does not give to a member any right of withdrawal. He already has the withdrawal privilege provided by the statute and there is no consideration for any obligation of the association under such by-law.

6. As to the statutes, set forth in the appendix of appellee's brief, rearranging the allocation of funds for and the order of payment of withdrawals, it is submitted that they were all enacted in the viewpoint of the Legislators of the respective States for the purpose of accommodating the withdrawal privilege to the economic conditions of the present day and in order to enforce mutuality under existing circumstances. The essential and fundamental feature of building and loan associations is perfect equality and mutuality. This is the fundamental law of these institutions, in the light of which all statutes, all by-laws and all contracts must be read. The courts have continuously struck down all features which were non-mutual or created preferences as violative of this fundamental law, and withdrawal itself, is subject to it, for it has always been held (1) that the privilege of withdrawal presupposes that upon withdrawal that there will be a relative portion of the assets left for continuing members, (2) that statutes providing for the withdrawal privilege are inoperative once the association is in fact insolvent, (3)

that contracts for the payment of withdrawals in violation of the statute are preferential, violative of public policy and void, (4) that in those few States where suits for withdrawal may be instituted upon the maturity of the withdrawal notices, a judgment for withdrawal does not change the status of the withdrawing member, who can obtain no preference over his fellow members by virtue of such judgment, (5) that on liquidation, the law applied is that of perfect equity, and, consequently, judgments for withdrawal, matured withdrawal notices and matured shares, which have been obtained and matured during the solvency of the association, have no preference on liquidation, and the holders thereof continue to be members and stand in *pari passu* with the unwithdrawn and unmatured shareholders, the distribution being pro rata to all.

7. Section 53 of the challenged statute which changed the order of payment in the event that withdrawals could not be paid in sixty days, from an order of payment in full to a payment of 25% on a rotary basis each time the withdrawal was reached and providing that under certain circumstances, the Commissioner may order the available funds pro-rated over all withdrawals, is a product of the times and occasioned by unemployment producing an unprecedented number of withdrawals at the same time it is making impossible for home owners to keep up their payments on their mortgage obligations, resulting in foreclosure and the acquisition of unsaleable real estate by associations. Unemployment also produced a cessation of new share subscriptions. The fundamantal law of the institution heretofore mentioned, requires that all members equally participate in assets. Thus associations became unable to meet all of their withdrawal requests within a reasonable time with an indefinite prospect as to ability to pay all withdrawals. New withdrawals were the result of frightened but not needy members, filing applications to obtain preferential payments. The payment of

funds available for withdrawals under these circumstances, in full to withdrawing members, in the order in which applications therefor were filed, would result in the payment to the wide awake insiders and their friends in full, in cash, leaving the more humble outsiders who might later withdraw, unable to obtain payment of their withdrawals until such time as a change in economic conditions would permit of the liquidation of the real estate. Consequently, this section of the challenged statute merely emphasizes the fundamental law of the institution, for it provides for equal participation in, and distribution of, assets in kind, a distribution of available cash proportionately to all the members in need thereof. This is a proper subject for a legislative enactment, for it protects, emphasizes and provides for the required equal participation in assets.

8. As the Court views withdrawal as a matter of contract, we respectfully submit that the amendable statute upon the subject, at the time of subscription is, by virtue of the authorities, a component part of the membership contract. All contracts are amendable and a contract which contains as a component part, an amendable statute evidencing a public policy, is itself amended by an amendment of that statute in the further exercise of the State's police power and such amendment of the statute as it amends the contract, cannot be deemed to involve its violation. Surely the statutory withdrawal privilege is an important inducement to membership in these associations. Members who subscribed for shares in contemplation of such statute, knew that it might be further amended and must be deemed to have contracted accordingly and with the knowledge that, if new economic conditions require a new public policy upon the subject, that the State had the right to amend the statute by enunciation of a new public policy for the benefit of the members who had subscribed for shares under the prior statute and, that they would be bound by such amendment.

9. Building and loan associations are the creatures of the building and loan statutes (which are enacted under the police power and enunciate the public policy of the State upon the subject) incorporated to effectuate the public policy of such statutes. All shareholders are members acquiring their withdrawal privileges under the statute empowering the association. They are thus charged with knowledge of the powers and limitations of the association of which they are a component part. They cannot complain of the obedience of the association to the mandate of the statute in force for the time being, and evidencing the public policy of the State for the time being, for public policy is known to them to be a changing thing differing in different times, under different circumstances.

10. While there is contrariety of decision on the subject, there is substantial, and we think, the weight of, authority in favor of the proposition that where there has been no statute enacted concerning withdrawals, that by-law amendments concerning such subject postponing the time of, allocating limited funds for, and providing for an order of payment of, withdrawals or permitting the payment of small shareholders without regard to the withdrawal list, are not violative of vested rights under prior by-laws and are procedural amendments regulating the time, but not impairing the quantum of the recovery. So too, the challenged Section 53 is procedural and is prospective in its application for it mandatorily limits the association as to its future disbursement of funds.

11. The opinion makes note that the challenged sections of the statute do not concern the preservation of solvency or the distribution of assets, but this we submit, is wrong, for withdrawal in itself is a distribution of assets, for on withdrawal, there is paid to the withdrawing member the value of his proportionate share of such assets. And all of the sections which are challenged are designed not only to preserve the mutual rights to a proportionate distribu-

tion of assets in kind, but are likewise designed to prevent future, and induce the cancellation of present, withdrawals, as a careful reading of them will disclose. They have a direct bearing on the conservation of the assets of the association and their preservation as functioning agencies of home finance and systematic thrift and the prevention of their practical liquidation.

12. The Court likewise said that this was not emergency legislation, but the Court below sitting in the State of Louisiana, took judicial notice of existing conditions there, which, in its opinion, justified the legislation, and besides, Section 53 meets the tests of emergency legislation, for it is effective only in an emergency and limited to the time of the emergency. The challenged section does not, when associations are in liquid condition and able to pay all withdrawals within sixty days, as is the usual condition in normal times, make any change in the payment of withdrawals. They are still to be paid in the order of filing and in full, but it is only when an association by reason of emergent condition becomes unable to pay withdrawals in that order, in that time, that the amendment becomes effective as to that association. Thus it takes effect only upon an emergency affecting a particular association and the rotary basis of payments or the pro rata basis of payments permitted and required by such amendment are to be followed only so long as the emergency affecting that particular association exists, and when it passes, the old order of payment in full again is required.

For the foregoing reasons, it is respectfully urged that the challenged statutes do not violate the obligation of appellants' contracts or due process and that this petition for a rehearing be granted and that upon such rehearing, your petitioners and such similar officials of other States who may desire to join petitioners, as *amici curiae,* be permitted to file a brief and to argue the case, for the limita-

tions of the rules of this Court do not permit the citation in this petition of the wealth of authority and the reasons sustaining the rules of law herein stated. The States whose statutes are affected by the decision herein, have not been heard. As hundreds of millions of dollars have been paid out under statutes in principle similar to those herein struck down, which the States have enacted for the purpose of protecting their citizens whose savings and homes are involved, they should, we respectfully submit, have an opportunity to be heard in defense of their statutes and of their rights to enact the same to effectively protect the savings of their citizens invested in the building and loan associations of their respective States and to protect and preserve such institutions so as to continue their effective local, mutual, community, social and economic service.

Cases involving the constitutionality of amendatory withdrawal statutes are pending in other States, whose constitutions may differ from that of Louisiana which statutes differ in some respects from the statutes of Louisiana here challenged and numerous other suits are threatened. As has been heretofore pointed out, the decision herein is not entirely clear, and it is to be anticipated that unless a rehearing herein is granted, and the rule of this Court distinctly enunciated, that there will be other appeals to this Court involving the constitutionality of other amendatory building and loan statutes.

We pray a rehearing in order that the judgment of the Louisiana Supreme Court be upon further consideration, affirmed.

Respectfully submitted,

JOHN WARREN,

Counsel for Philip Lutz, Jr., Attorney General of the State of Indiana and Earl C. Bucher, Supervisor of Building and Loan Division of the Department of Financial Institutions of the State of Indiana; Otto Kerner, Attorney General of the State of Illinois and Poyntelle Downing, Supervisor of Building and Loan Associations of the State of Illinois; Edward L. O'Connor, Attorney General of the State of Iowa and C. W. Storms, Auditor of State of the State of Iowa; Clarence V. Beck, Attorney General of the State of Kansas and L. E. Roush, Supervisor of Building and Loan Associations of the State of Kansas; Gaston L. Porterie, Attorney General of the State of Louisiana and J. S. Brock, Bank Commissioner of the State of Louisiana; Roy McKittrick, Attorney General of the State of Missouri and Ira A. McBride, Supervisor of Bureau of Building and Loan Supervision of the State of Missouri; Dan C. Boney, Insurance Commissioner of the State of North Carolina; Howard C. Johnson, Banking Commissioner of the State of Oklahoma; James E. Finnegan, Attorney General of the State of Wisconsin and C. P. Diggles, Supervisor, Building and Loan Division of Banking Department of State of Wisconsin.

## Certificate of Counsel.

I, JOHN WARREN, Counsel for the above-named petitioners for rehearing, do hereby certify that the foregoing petition for a rehearing of the above entitled causes is presented in good faith and not for delay.

JOHN WARREN,

Counsel for Philip Lutz, Jr., Attorney General of the State of Indiana and Earl C. Bucher, Supervisor of Building and Loan Division of the Department of Financial Institutions of the State of Indiana; Otto Kerner, Attorney General of the State of Illinois and Poyntelle Downing, Supervisor of Building and Loan Associations of the State of Illinois; Edward L. O'Connor, Attorney General of the State of Iowa and C. W. Storms, Auditor of State of the State of Iowa; Clarence V. Beck, Attorney General of the State of Kansas and L. E. Roush, Supervisor of Building and Loan Associations of the State of Kansas; Gaston L. Porterie, Attorney General of the State of Louisiana and J. S. Brock, Bank Commissioner of the State of Louisiana; Roy McKittrick, Attorney General of the State of Missouri and Ira A. McBride, Supervisor of Bureau of Building and Loan Supervision of the State of Missouri; Dan C. Boney, Insurance Commissioner of the State of North Carolina; Howard C. Johnson, Banking Commissioner of the State of Oklahoma; James E. Finnegan, Attorney General of the State of Wisconsin and C. P. Diggles, Supervisor, Building and Loan Division of Banking Department of State of Wisconsin.

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# Supreme Court of the United States

OCTOBER TERM, 1935

## Nos. 287, 288, 289, 290 and 316

No. 287 CAMILLE V. TREIGLE, Appellant, v. ACME HOMSTEAD ASSOCIATION, Appellee.

No. 288 CAMILLE V. TREIGLE, Appellant, v. THRIFT HOMESTEAD ASSOCIATION, Appellee.

No. 289 TREIGLE SASH FACTORY, INC., Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

No. 290 TREIGLE SASH FACTORY, INC., Appellant, v. UNION HOMSTEAD ASSOCIATION, Appellee.

No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

## PETITION OF WILLIAM McCRAW, ATTORNEY GENERAL OF THE STATE OF TEXAS and ZITA GOSSETT, BANKING COMMISSIONER OF THE STATE OF TEXAS, FOR REHEARING.

JOHN WARREN,
MACO STEWART, JR.,
Counsel for William McCraw,
Attorney General of the State of Texas
and Zita Gossett, Banking Commissioner of the State of Texas.

# Supreme Court of the United States

OCTOBER TERM, 1935

## Nos. 287, 288, 289, 290 and 316

No. 287 CAMILLE V. TREIGLE, Appellant, v. ACME HOMSTEAD ASSOCIATION, Appellee.

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No. 290 TREIGLE SASH FACTORY, INC., Appellant, v. UNION HOMSTEAD ASSOCIATION, Appellee.

No. 316 JOSEPH MITCHELL, Appellant, v. CONSERVATIVE HOMESTEAD ASSOCIATION, Appellee.

## PETITION OF WILLIAM McCRAW, ATTORNEY GENERAL OF THE STATE OF TEXAS and ZITA GOSSETT, BANKING COMMISSIONER OF THE STATE OF TEXAS, FOR REHEARING.

Come now William McCraw, Attorney General of the State of Texas and Zita Gossett, Banking Commissioner of the State of Texas, and present this, their petition for rehearing of the above entitled causes, and in support thereof, respectfully show:

Considering that the opinion in these cases lays down a principle that if followed, will adversely affect the statute law of Texas regarding Building and Loan Associations of Texas,

We respectfully pray rehearing be granted and we be permitted to file argument in the cases setting forth wherein the powers of the Banking Commissioner in control of Texas associations are affected.

Respectfully submitted,

JOHN WARREN,
MACO STEWART, JR.,
Counsel for William McCraw,
Attorney General of the State of Texas and
Zita Gossett, Banking Commissioner of the
State of Texas.

## Certificate of Counsel.

I, JOHN WARREN, Counsel for the above-named William McCraw, Attorney General of the State of Texas and Zita Gossett, Banking Commissioner of the State of Texas, do hereby certify that the foregoing petition for a rehearing of the above-entitled causes is presented in good faith and not for delay.

JOHN WARREN,
Counsel for William McCraw,
Attorney General of the State of Texas and
Zita Gossett, Banking Commissioner of the
State of Texas.

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# SUPREME COURT OF THE UNITED STATES.

No. 287.—October Term, 1935.

Camille V. Treigle, Appellant, *vs.* Acme Homestead Association. } Appeal from the Supreme Court of the State of Louisiana.

[February 3, 1936.]

Mr. Justice Roberts delivered the opinion of the Court.

This is one of five appeals[1] from a decision of the Supreme Court of Louisiana,[2] presenting the question whether certain provisions of Act No. 140, adopted by the legislature of that State on July 12, 1932,[3] are consistent with Article I, Section 10, and Section 1 of the Fourteenth Amendment, of the Constitution of the United States.

Prior to the adoption of Act No. 140 the laws of Louisiana provided that every stockholder of a domestic building and loan association should have the right to withdraw as a member upon filing a written notice of intention so to do; and thereupon to receive the amount of his investment and a share of the profits. Every association was required to keep a register, in which notices of withdrawal were to be entered in the order of presentation; and to pay withdrawals in that order. If the proportion of the association's income ordinarily made applicable to the demands of withdrawing members was insufficient to pay all such demands within sixty days from date of notice, one-half of the association's receipts was to be set apart to liquidate such members' claims, until all deferred claims were paid.[4]

On May 19, 1932, appellant, as owner of fifty shares of full paid stock of appellee, a building and loan association incorporated

[1] The companion cases are: No. 288, *Treigle* v. *Thrift Homestead Association;* No. 289, *Treigle Sash Factory, Inc.* v. *Conservative Homestead Association;* No. 290, *Treigle Sash Factory, Inc.* v. *Union Homestead Association;* No. 316, *Joseph Mitchell* v. *Conservative Homestead Association.*

[2] 181 La. 941. The other cases are reported in 181 La. pp. 971 to 973, inclusive.

[3] Louisiana Laws, 1932, p. 454.

[4] Act 120 of 1902, Louisiana Laws, 1902, p. 195, as amended by Act 280 of 1916, Louisiana Laws, 1916, p. 568.

and domiciled in Louisiana, gave a written withdrawal notice. Thereafter the Legislature adopted Act No. 140 of 1932. By Section 53 the directors of any association are authorized, before making any appropriation of receipts which may be applied to the liquidation of claims of withdrawing members, to use its receipts and funds for operating expenses, maintenance and improvement of repossessed property, payment of obligations and creation of cash reserves for future dividends. Section 54 provides that whenever, subsequent to the passage of the act, the proportion of receipts ordinarily made applicable to the demands of withdrawing members is insufficient to pay all such demands within sixty days from date of application for withdrawal, the applicant first on the list shall receive twenty-five per cent of the amount due him, not less, however, than $500. As to any balance his claim is to be transferred to the end of the list and, except as hereafter noted, he is to receive no further payments until his name shall have reached the head of the list. Each pending application is to be similarly treated. New applications are to be placed at the foot of the list. The association may, however, in its discretion, pay in full any demand which amounts to less than $100 and may also pay not more than $100 per month to any applicant if the directors find his necessities call for such payment.

Section 55 gives the directors discretionary power to authorize an allowance on the amount of unpaid withdrawals under such terms and conditions as to the amount of individual withdrawals in view of the time the application has been on the list, or otherwise, as the board may decide; but the amount of such allowance is not to exceed sixty per cent of the rate of dividend currently paid in cash on continuing members' shares. The allowance may be withdrawn at any time without affecting the association's right to continue to pay dividends on the shares of continuing members.

Section 56 empowers the directors to allocate, from receipts or other assets, sums to be paid withdrawing members; and supersedes the earlier provision for setting aside fifty per cent of all receipts for this purpose. The section further provides that twenty-five per cent of the gross receipts may be used for making loans notwithstanding the existence of a withdrawal list and that all, or any part, of the funds and current receipts may be expended for payment of debts, operating expenses, or dividends to continuing members.

The appellant brought suit in the civil district court for the Parish of Orleans to restrain the appellee from complying with the foregoing provisions of Act 140. In his petition he recited his ownership of full-paid shares; his rights under the association's charter and by-laws and the statutes in force prior to the adoption of that act; his application on May 19, 1932, for withdrawal of his shares. He alleged that, subsequent to the date of his notice, other similar applications had been [redacted] paid in full but that his had not been reached for payment; that, in violation of the contract clause and the Fourteenth Amendment of the Federal Constitution, Act 140 purports to destroy and materially change his vested rights as a withdrawing shareholder. A rule *nisi* issued, the appellee answered, and also excepted to the petition and demand for failure to state a right of action or a cause of action. Judgment awarding an injunction was reversed by the Supreme Court of Louisiana and the suit was dismissed.

The statute, in Section 76, provides:

"Any person holding shares in an association . . . who attacks the constitutionality . . . of any . . . provision of this statute must file suit to that effect against the association within ninety days from the time when the present Statute goes into effect; and said period of ninety days is now fixed as the term of prescription within which any remedy in that behalf must be instituted in the courts by any member or other person; and the failure to file such suit within that delay shall be deemed and held by all courts at all times thereafter as an acquiescence in . . . any . . . provision of the present statute, and after such ninety-day period no further attack on the constitutionality of . . . any . . . provision of the present statute can be presented; . . . . . ."

The appellant instituted his suit within the ninety-day period. In his petition he alleged that he had no adequate remedy at law, and that he would suffer irreparable injury if the appellee's officers acted as permitted or required by the statute. The Supreme Court said:

"There is no doubt, however, that the Act of 1932 did prevent some of the many withdrawing shareholders in building and loan associations throughout the state from collecting the amount of their shares in full at the time when payment would have been made if this statute had not been adopted. We shall rest this decision, therefore, upon the proposition that the Act of 1932 did deprive the plaintiff of an advantage, and of a valuable right,

which he enjoyed by virtue of having his name on the withdrawal list more than sixty days before the statute was adopted. The question, therefore, is whether the Legislature could deprive the plaintiff of the advantage and right which he enjoyed, without violating the constitutional limitation forbidding the passing of a law impairing the obligation of contracts, or divesting vested rights."

The statute impairs the obligation of the appellant's contract and destroys his vested rights in contravention of Article I, Section 10, and Amendment XIV, Section 1, of the Constitution.

The court below held the challenged sections of the act proper exertions of the state's police power, upon the view that state legislation to promote health, safety, morals or welfare cannot be defeated by private contracts between citizens, or nullified because it interferes with vested rights; and, since building and loan associations are creatures of the state, the power to alter and amend their charters inheres in the sovereign. The appellant, conceding the correctness of these propositions, insists that the statute is not in fact a valid exercise of the police power and cannot be sustained as an amendment of the association's charter.

The appellee asserts the act was adopted to meet the existing economic emergency; members of, and borrowers from, building and loan associations found themselves unable to keep up their dues and interest payments; those whose savings were invested in the shares of such associations were compelled by their necessities to seek withdrawal of the investment; these conditions imperiled the usefulness, if not the existence, of many building and loan associations; the state had a vital interest in their preservation and the equitable administration of their assets in the interest of all concerned. The appellant replies that the sections under attack are neither intended nor adapted to conserve the assets of building associations, but, on the contrary, affect merely the rights of members *inter sese,* and are unreasonable and arbitrary interferences with vested contract rights.

The act is a revision and codification of the statutory law governing building and loan associations, including their incorporation, management, supervision by state administrative authority, winding up and dissolution. It does not purport to deal with any existing emergency and the provisions respecting the rights of withdrawing members are neither temporary nor conditional. Com-

pare *W. B. Worthen Co.* v. *Thomas,* 292 U. S. 426, 433-434. The sections in question do not contemplate the liquidation of associations, the conservation of their assets or the distribution thereof amongst creditors and members. Other sections deal with these matters.[5] Section 54 merely changes the order of payment of those entitled to withdraw their investments. The section effects no reduction in the amount of the debt, no postponement of payment of the total, but a redistribution of the proportions to be paid to individuals. The provision is comparable to a statute declaring that whereas preferred stockholders heretofore have enjoyed a priority in the distribution of assets, in that respect they shall hereafter stand *pari passu* with common stockholders. Such an interference with the right of contract cannot be justified by saying that in the public interest the operations of building associations may be controlled and regulated, or that in the same interest their charters may be amended. The statute merely attempts, for no discernible public purpose, the abrogation of contracts between members and the association lawful when made. This cannot be done under the guise of amending the charter powers of the corporation. Compare *Bedford* v. *Eastern Building and Loan Association,* 181 U. S. 227.

Under existing law, and the appellant's contract, fifty per cent of the receipts of the association had to be set apart to pay withdrawing members. By the new legislation this requirement is abolished and the amount to be set aside is left to the sole discretion of the directors. They are authorized to apply the association's receipts to the making of loans, to payment of old or new debts, to dividends to continuing members, or to the creation of a cash reserve for future dividends. The sections permitting such use of the amounts collected do not tend to conserve the assets of the association, to render it more solvent, or to insure that its affairs will be administered so as to protect the investments of the continuing and withdrawing members. They do alter the rights of the withdrawing members as between themselves and as against continuing members.

The appellee bases its entire argument in support of the challenged enactment upon the proposition that, as building and loan

[5] See Sections 66 and 67. See also Act No. 44, Second Extraordinary Session of 1934, Louisiana Laws, 1934, p. 156.

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associations are incorporated for a quasi-public purpose, the state has a peculiar interest and a concomitant power of supervision and regulation to prevent injury and loss to their members; and it is said that this court affirmed the principle in *Hopkins Federal Savings and Loan Association* v. *Cleary, et al.*, 55, October Term, 1935 (decided December 9, 1935). We have no disposition to qualify what was there said. We recognize that these associations, like banks and public service companies, are subject to a degree of regulation which would be unnecessary and unreasonable in the case of a purely private corporation. But laws touching building and loan associations, like those affecting banks or utility companies, must be confined to purposes reasonably connected with the public interest as distinguished from purely private rights. The legislature has no greater power to interfere with the private contracts of such corporations, or the vested rights of their stockholders as such, under the pretext of public necessity, than it would have to attempt the same ends in the case of a private corporation. Though the obligations of contracts must yield to a proper exercise of the police power,[6] and vested rights cannot inhibit the proper exertion of the power,[7] it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive.

As we have pointed out, the questioned sections deal only with private rights, and are not adapted to the legitimate end of conserving or equitably administering the assets in the interest of all members. They deprive withdrawing members of a solvent association of existing contract rights, for the benefit of those who remain. We hold the challenged provisions impair the obligation of the appellant's contract and arbitrarily deprive him of vested property rights without due process of law.

The judgment of the Supreme Court of Louisiana must be reversed. As numbers 288, 289, 290 and 316 involve the same question as the instant case, a like judgment will be entered in each.

*So ordered.*

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[6] *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398.
[7] *Nebbia* v. *New York*, 291 U. S. 502.